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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 VICENTE CARRASCO FLORES, et
4 al.,

Plaintiffs,

5 v.

17 CV 6915 (LGS)

6 NYC PASTA AND RISOTTO CO. LCC,
7 et al.,

8 Defendants.

9 -----x

10 New York, N.Y.
11 September 7, 2018
12 9:15 a.m.

Before:

13 HON. LORNA G. SCHOFIELD,

14 District Judge

15 APPEARANCES

16 MICHAEL FAILLACE & ASSOCIATES PC

Attorneys for Plaintiffs

17 BY: COLIN J. MULHOLLAND

SARA ISAACSON

18 LEHMAN LAW GROUP LLC

Attorneys for Defendants

19 BY: BRIAN E. LEHMAN

20 JULIE R. SOLARZ

21 ALSO PRESENT:

22 Marcia Gotler, Spanish Interpreter

23 Jan Calloway, Spanish Interpreter

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1 THE COURT: Good morning, everybody.

2 You may be seated. You had a chance to chat with each
3 other this morning?

4 MR. MULHOLLAND: We haven't chatted other than the
5 e-mails that were distributed this morning.

6 THE COURT: Tell me where things stand. Start with
7 plaintiffs. Then I'll hear --

8 MR. MULHOLLAND: It is my understanding that the
9 parties are prepared to agree to stipulate to the facts that
10 are outlined in the post stipulation that I e-mailed to the
11 Court this morning.

12 THE COURT: OK. And are there any outstanding facts
13 then that need to be found apart from the two issues that the
14 defendant has expressly tried to reserve?

15 MR. MULHOLLAND: Yes. Just the tools of the trade.

16 THE COURT: OK. And it's the amount of the tools of
17 the trade?

18 MR. MULHOLLAND: Yes.

19 THE COURT: All right. I'm curious because both
20 plaintiffs testified about dollar amounts for tools of the
21 trade, not precise dollar amounts but estimated dollar amounts.
22 Could that be a basis for stipulating to this number?

23 MR. MULHOLLAND: I would be happy to --

24 THE COURT: OK. Somebody want to come up with a
25 number or I'll pull up my notes.

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1 MR. MULHOLLAND: I could take a look at the trial
2 transcript on my phone and propose a number.

3 THE COURT: Sure. And your transcript is on your
4 phone?

5 MR. MULHOLLAND: Yes.

6 (Pause)

7 THE COURT: So my notes say that he bought three
8 bicycles. Maybe someone with a calculator -- the first one was
9 1300. The second one was 950. The third one was 700. And he
10 said he had to change the inner tubes that was 60 and the
11 brakes, that was 80. So could we add all of those three
12 numbers up.

13 MR. MULHOLLAND: Absolutely. I have \$3,290.

14 THE COURT: OK. Are the defendants prepared to
15 stipulate to that number for the tools of the trade for
16 Mr. Carrasco?

17 MR. LEHMAN: Yes, your Honor. If those are the
18 numbers in the transcript then we stipulate to them. My
19 co-counsel has 1300.

20 MS. SOLARZ: I could have heard wrong.

21 THE COURT: Oh, I'm sorry. These are just my notes.
22 I have 1300 for the first number, the 950, 700. So it would be
23 \$3,090.

24 MR. LEHMAN: The defense will stipulate to that.

25 THE COURT: OK. All right. So.

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1 MR. MULHOLLAND: Ms. Mukhina testified she bought some
2 pants and some shirts. She testified she bought \$20 shirts.

3 THE COURT: I have 25 to \$30 pants. Sorry and \$20
4 shirts, right, three or four times a year?

5 MR. MULHOLLAND: Yes.

6 THE COURT: So why don't we say pants are 30, shirts
7 are 20, is 50. Why don't we say 50 times three and a half.

8 MR. MULHOLLAND: Yes, your Honor. That's fine.

9 THE COURT: So that's 175 and then five aprons for 40
10 is 215 for total for Ms. Mukhina.

11 MR. MULHOLLAND: Yes.

12 THE COURT: OK. Let me take a look at the
13 stipulation.

14 Mr. Lehman, will you stipulate the 215 is the amount
15 for the tools of trade for Ms. Mukhina's clothing?

16 MR. LEHMAN: Yes, your Honor, the defendant's
17 stipulate to that.

18 MR. MULHOLLAND: Your Honor, how would we enter the
19 rest of the stipulation into the record, by signature, by
20 reading it into the record, something else?

21 THE COURT: Let me just read it first and then we'll
22 talk about that.

23 (Pause)

24 THE COURT: Just for my verification, paragraph 10
25 under "Carrasco", does that mean that he worked six days per

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1 workweek that exceeded 10 hours so he would be entitled to
2 spread of hours six days a week for the time he worked?

3 MR. MULHOLLAND: Yes.

4 THE COURT: OK. Thank you.

5 OK. So what I propose concerning the stipulation, the
6 jury doesn't really need any of this for the findings that they
7 need to make. So what I suggest do you is that you sign it. I
8 will mark it as a court exhibit and enter it into the record in
9 that way.

10 MR. LEHMAN: Your Honor, that sounds good. I just
11 want to be clear, for the record that the company stipulating
12 to this as far as the facts with regard to the mental state of
13 the --

14 THE COURT: Wait. Wait. Wait. Wait. I understand
15 the company is stipulating to this. I presume that in the
16 event the individual defendants are found liable, they are also
17 stipulating to it.

18 MR. LEHMAN: That is exactly right.

19 THE COURT: Go ahead. I am sorry.

20 MR. LEHMAN: Just those two areas of issues remaining
21 are those individual defendants, the employers is to find under
22 the FLSA and if so, did they not willfully. There is an
23 affirmative defense of good faith but we are dropping that
24 because it's in the affirmative defense so those will be the
25 only two issues here.

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1 THE COURT: OK.

2 MR. LEHMAN: I assume but I want to make clear here
3 we're agreeing that these facts will not be used in front of
4 the jury to try to prove or disprove those two issues.

5 Does plaintiff's counsel agree to that?

6 THE COURT: In other words, there is no need to
7 introduce these facts to the jury that are in the stipulation?

8 MR. MULHOLLAND: Yes. That's fine.

9 MR. LEHMAN: One more clarification?

10 THE COURT: Yes.

11 MR. LEHMAN: With that said, the testimony may be
12 presented to the jury for those two issues on credibility
13 issues?

14 THE COURT: Yes. In other words, those two issues
15 will be presented to the jury. There are two more witnesses,
16 then the jury will be given the instruction that I circulated
17 yesterday evening on these two issues.

18 MR. LEHMAN: Agree, your Honor.

19 THE COURT: Is that OK with the plaintiff?

20 MR. MULHOLLAND: Yes, your Honor.

21 THE COURT: All right. So I wonder if we should -- do
22 you both have copies hard copies of the stipulation?

23 MR. LEHMAN: Yes, your Honor.

24 THE COURT: I wonder if we should add just on the last
25 page below my signature. You could initially just write it in

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1 and let's agree on the language first that plaintiff Carrasco
2 incurred tools of the trade expenses totaling \$3090, then
3 another paragraph, plaintiff Mukhina incurred expenses tools of
4 the trade of \$215.

5 MR. LEHMAN: Yes, your Honor.

6 THE COURT: Does somebody want to write that in?

7 MR. MULHOLLAND: Yes.

8 THE COURT: You'll both sign one copy and then I will
9 mark it as a court exhibit.

10 (Pause)

11 THE COURT: So there are two housekeeping matters.
12 One is I saw that the defendant filed a Rule 50 motion
13 yesterday for directed verdict on the employer issue. I will
14 reserve decision on that until the close of the plaintiff's
15 case but thank you for alerting me to it.

16 MR. LEHMAN: Yes, your Honor. There is one issue on
17 that. I expect to renew it once all the witnesses have
18 testified.

19 THE COURT: You can just stand up and say "I renew my
20 motion".

21 MR. LEHMAN: I just wanted to make sure the language
22 is there.

23 THE COURT: That's fine. I also got your comments on
24 the proposed verdict sheet. And what I suggest is at some
25 point we'll have a break and a short charging conference and we

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1 can discuss it then. OK?

2 MR. MULHOLLAND: Thank you.

3 THE COURT: All right. So I just want to express my
4 appreciation to both counsel for the diligence because I know
5 you've basically been working all night and all morning to try
6 to accomplish this and you have. So congratulations. I
7 appreciate it.

8 MR. MULHOLLAND: Thank you, your Honor.

9 Oh, we have a copy of the stipulation executed.

10 THE COURT: OK. Do you want to hand that up?

11 MR. MULHOLLAND: Sure.

12 (Pause)

13 THE COURT: So we had two notes yesterday which were
14 Court Exhibits Three and Four. So this signed stipulation
15 would be Court Exhibit Five. Let's deal with the two notes.

16 The first note is:

17 Can we see the text messages text for approval of the
18 checks?

19 We had already discussed that. Essentially, what I am
20 going to tell the jury is "the evidence is what the evidence
21 is". And it's up to the parties to present the evidence. And
22 they shouldn't speculate about why certain evidence is not
23 introduced.

24 The other question which I don't think you knew about
25 is --

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1 MR. LEHMAN: Your Honor?

2 THE COURT: Yes.

3 MR. LEHMAN: I don't know if there is a way to put it
4 or not but to refer to it as "evidence" when it is not in
5 evidence, you should not speculate it as evidence that was not
6 submitted. I just want to be clear with the jury the evidence
7 is what was presented here. There may be other documents and
8 other things out there but that's not evidence.

9 THE COURT: I'll say, "You shouldn't speculate about
10 documents accepted by the Court that's not evidence."

11 MR. LEHMAN: Thank you, your Honor.

12 THE COURT: So then we have Court Exhibit Four which
13 is a question.

14 You had a check from 2016 but you left work
15 August 2015. Is that because you were paid late?

16 And this was a question for Ms. Mukhina. I'm not sure
17 that is directly relevant to either of the issues here but
18 there's nothing improper about the question. And it is within
19 the scope of the direct. So I'm inclined to just actually
20 maybe there's a better way to do this. Maybe I can just find
21 out the answer from Ms. Mukhina and I'll tell the jury what the
22 answer is.

23 The check was from 2016. You left work 2015. Do you
24 know why that is?

25 MS. MUKHINA: That's because after I left they still

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1 owed me money and I tried to get the payments from Satinder
2 Sharma and that's why he gave me some checks after couple of
3 checks.

4 THE COURT: OK.

5 MR. LEHMAN: Your Honor, we agree with that statement
6 and would like for that full statement to be read to the jury
7 since that's the answer to the question.

8 THE COURT: OK. I need to find it then.

9 Off the record.

10 (Discussion held off the record)

11 THE COURT: Let's go back on the record.

12 So I need to tell the jury that the scope of the trial
13 is reduced and so I need to say something and I am inclined to
14 try to get it from one of the e-mails.

15 (Pause)

16 THE COURT: OK. This is what I propose saying:

17 The corporate defendant, in other words, the
18 restaurant, admits that it did not pay the plaintiffs the wages
19 and monies claimed by them under the federal and state labor
20 laws. That means you will not have to render a verdict on
21 those issues. The individual defendants assert however, that
22 they were not plaintiffs' employers within the meaning of the
23 labor laws and only if you find that they were that their
24 resulting violations were not willful. That's not that clear.

25 So let's say the individual defendants assert two

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1 things however, first that they were not plaintiffs' employer
2 within the meaning of the labor laws. And second, only if you
3 find that they were that there was resulting violations were
4 not willful.

5 So that means only two issues remain for you to decide
6 whether the individual defendants were plaintiffs' employers
7 and you will have to answer that as to each employer and each
8 plaintiff -- answer that question. And only if so, whether the
9 individual defendants' violations were willful within the legal
10 definition that I will give you.

11 MR. MULHOLLAND: Could I hear that one more time?

12 THE COURT: Sure. Which part?

13 MR. MULHOLLAND: The part about willfulness.

14 THE COURT: Sure. And only if so, whether the
15 individual defendants' violations were willful within the legal
16 definition that I will give you.

17 MR. MULHOLLAND: It sounds like the individual
18 employer liability is contingent upon a finding of willfulness.

19 THE COURT: No.

20 MR. MULHOLLAND: No.

21 THE COURT: Let me read the whole paragraphs. So that
22 means only two issues remain for you to decide whether the
23 individual defendants were plaintiffs' employers and you'll
24 have to answer that question as to each employer and each
25 plaintiff and -- I think we should do first and second here.

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1 MR. LEHMAN: Your Honor, may I ask a question?

2 THE COURT: Sure.

3 MR. LEHMAN: I believe that the damages are the same
4 regardless of whether or not there is willfulness because of
5 the state laws. So I would just ask Mr. Mulholland is this a
6 question that he wanted to present given that the amount would
7 be the same regardless unless I'm inaccurate.

8 MR. MULHOLLAND: Well, yeah. I mean, the same. I was
9 just concerned that the language it sounded like the employer,
10 they were going to be individually liable he had to be willful.

11 THE COURT: No. I'll say in a second only if you find
12 that a particular individual defendant was an employer, then
13 you will have to decide whether that individual defendants'
14 violations were willful.

15 Is that OK?

16 MR. MULHOLLAND: Yes, your Honor.

17 MR. LEHMAN: So two points on that, your Honor. The
18 first is I just want to be clear what I'm saying. If they are
19 not willful she gets --

20 THE COURT: I understand what you are saying but I
21 think --

22 So Mr. Lehman is asking you, Mr. Mulholland, whether
23 you still want to be able to have as part of your case the
24 issue of willfulness. He says it doesn't matter. I have not
25 considered that issue.

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1 MR. LEHMAN: If there's confusion we could eliminate
2 and the damages, could be the statement but I will defer to
3 him.

4 THE COURT: You can make your argument later about how
5 the damages are the same but if Mr. Mulholland agrees now, then
6 we don't have to ask them about the question of willfulness.
7 Willfulness affects the statute of limitations for the FLSA
8 violations and to the extent it is from two to three years?

9 MR. LEHMAN: Yes. The state law is six years. So
10 that's the only affect it's having on this case.

11 THE COURT: Except are there particular damages that
12 are only FLSA damages?

13 MR. MULHOLLAND: No.

14 THE COURT: So can we get rid of the willfulness
15 questions since the labor law violations, the New York labor
16 law violations are admitted?

17 MR. MULHOLLAND: We could. I guess you should clarify
18 that it's an employer under both the New York Labor Law and --
19 but under both FLSA and the New York labor law.

20 THE COURT: OK. The corporate defendant, in other
21 words the restaurant, admits that it did not pay the plaintiffs
22 the wages and monies claimed by the plaintiffs under the
23 federal and state labor laws. That means you will not have to
24 render a verdict on those issues. The individual defendants
25 assert however that they were not plaintiffs' employers within

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1 the meaning of the labor law. So that means only one issue
2 remains to decide whether the individual defendants were
3 plaintiffs' employers and you will have to answer that question
4 as to each of the employers of the plaintiff.

5 MR. LEHMAN: Agreed, your Honor. One minor point?

6 THE COURT: Yes.

7 MR. LEHMAN: To my ears each ease we are, you say they
8 assert that sounds like an affirmative defense, so I would
9 suggest maintain but if not --

10 THE COURT: If you're happy with "maintain", that's
11 fine.

12 MR. LEHMAN: There's no way they are not going to pick
13 that up.

14 THE COURT: Is that OK?

15 MR. MULHOLLAND: Yes, judge.

16 THE COURT: So that's what I'm going to tell them. So
17 the housekeeping issues are first that then I'll deal with the
18 two notes and then we'll continue with our witnesses.

19 Off the record.

20 (Discussion held)

21 THE COURT: Back on the record.

22 Since we're waiting I will give you a partial ruling
23 on the Rule 50 motion and I will deny it in part and reserve it
24 in part as follows:

25 As you know under Rule 50 the standard is whether a

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1 reasonable jury would have a legally sufficient evidentiary
2 basis to find for the party on that issue and if that
3 evidentiary basis is insufficient the Court may resolve the
4 issue against the party.

5 So you have asked me, Mr. Lehman, for defendants to
6 resolve the issue of whether the individual defendants were
7 employers of the individual plaintiffs and you've essentially
8 alleged that the evidence was insufficient so that no
9 reasonable jury could find that. So my partial ruling is as
10 follows:

11 First, as to defendant Sharma, the evidence even as it
12 has proceeded thus far as sufficient for a reasonable jury to
13 conclude that he was plaintiff Mukhina's employer. First, the
14 evidence showed that he's a 50 percent owner of the business.
15 When problems with payments occurred Ms. Mukhina's co-workers
16 directed her to Mr. Sharma. Mr. Sharma communicated by text
17 message about delays in payroll payments. Ms. Mukhina was
18 provided with blank checks to be used for her payroll signed by
19 Mr. Sharma. She testified that Mr. Sharma personally
20 instructed her how to fill them out and when to deposit them.
21 And we saw physically had evidence that some payroll checks
22 were signed by Mr. Sharma.

23 As you know I have to construe the evidence and make
24 inferences. Contrary to the nonparties I am going to assume
25 for this purpose that all of that evidence is believed by the

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1 jury and all inferences drawn in favor of plaintiff and
2 therefore, deny the motion as to defendant Sharma and plaintiff
3 Mukhina.

4 Second, with regard to defendant Sharma, again,
5 evidence I find was sufficient for a reasonable jury to
6 conclude that he was plaintiff Carrasco's employer. The
7 evidence, of course, is much thinner there but although, there
8 was no evidence offered to support the inference directly as to
9 Mr. Carrasco, drawing all inferences in his favor as to the
10 nonmoving party a reasonable jury could infer from the evidence
11 presented through Ms. Mukhina that Mr. Sharma was significantly
12 involved generally in employee payroll issues.

13 So I deny the motion as to Mr. Sharma and
14 Mr. Carrasco.

15 Finally, I deny the motion as to defendant Montoya and
16 plaintiff Carrasco. The evidence was sufficient for a
17 reasonable jury to conclude that defendant Montoya was
18 plaintiff Carrasco's employer. The evidence showed that
19 Mr. Montoya gave Mr. Carrasco his schedule, that Mr. Montoya
20 gave Mr. Carrasco orders and assignments everyday, that
21 Mr. Montoya and that those included that Mr. Carrasco's shift
22 was finished after he cleaned the stoves and the floor and that
23 Mr. Montoya sometimes castigated or disciplined Mr. Carrasco.

24 Again, drawing all inferences in favor of the
25 nonmoving party, Mr. Carrasco therefore, assuming that all that

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1 is true, I deny the motion with regard to Montoya and Carrasco.

2 I reserve on the issue of whether defendant Montoya.
3 Whether a reasonable jury could conclude that defendant Montoya
4 was Mr. Carrasco's employer, there has not been any evidence to
5 support that inference but we still have further witnesses to
6 hear from and so I reserve on that.

7 MR. MULHOLLAND: Your Honor, you mean whether
8 Mr. Montoya was Ms. Mukhina's employer?

9 THE COURT: I misspoke. You're right, I think. Yes,
10 Mr. Montoya was Ms. Mukhina's lawyer. You are absolutely
11 correct. Thank you.

12 MR. LEHMAN: So for purposes of reserving issue on the
13 Rule 50, I need to renew that motion at the end of the jury,
14 I'd have to assume based on your reasons now that that will be
15 denied just for --

16 THE COURT: Except as to we haven't heard anything yet
17 from Montoya about Montoya and -- so you have to renew your
18 motion. And what I will probably do is just say that I reserve
19 and then what I'll rule on that last piece.

20 MR. LEHMAN: I would prefer not to say I renew my
21 motion and denied --

22 THE COURT: OK. If you want me to deem your motion
23 renewed and we'll understand at the end of the presentation of
24 the plaintiffs' case you will have renewed your motion, I will
25 have deferred, that's fine with me.

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MR. LEHMAN: OK, your Honor.

THE COURT: All right. Mr. Lewis, which further word on the trains or the jury?

THE DEPUTY CLERK: No.

THE COURT: Any further word from Mr. Street?

THE DEPUTY CLERK: No.

THE COURT: We can go off the record.

(Discussion held)

(Jury present)

THE COURT: You may be seated.

Good morning, ladies and gentlemen.

I know we're missing one juror but we've really waited as long as we would wait and because I promised we would get done today, we're going to proceed. And unfortunately, the other juror will have to be excused when he or she arrives. I don't actually recall who it is that's missing.

In any event, we have not been wasting the time that we were waiting and you were in the jury room. So let me just read something to you. The case has been significantly narrowed. Meaning, there's much less for you to decide.

So the corporate defendant, meaning the restaurant, admits that it did not pay the plaintiffs the wages and monies claimed by the plaintiffs under the federal and state labor laws. That means that you will not have to render a verdict on those issues.

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1 The individual defendants however, maintain that they
2 were not plaintiffs' employers within the meaning of the labor
3 laws. So that means only one issue remains for you to decide
4 and that is whether the individual defendants, whether each of
5 them or each of them were each of the plaintiffs employers.
6 And so you'll have at the end I'll give you instructions on
7 what an employer is. I'll show you the verdict form but you'll
8 have to answer that question as to each employer and each
9 plaintiff. OK? So that's the only issue on the table.

10 Now, yesterday we had two questions from the jury.
11 The first question which I am marking as Court Exhibit Three
12 is:

13 Can we see the text messages, text for approval
14 checks?

15 And I took that to mean the text messages that
16 Ms. Mukhina had testified about exchanging with Mr. Sharma. I
17 am sorry I can't be very helpful to you on this. The evidence
18 is what the evidence is and so you are to make your judgment
19 based on what's in evidence and you should not speculate about
20 documents or anything that either is in evidence or not in
21 evidence. Just don't speculate about it. All right?

22 The other question is:

23 You had a check from 2016 but you left work in
24 August 2015. Is that because you were paid late?

25 And so rather than call Ms. Mukhina to the stand I

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Sharma - Direct

1 asked her the question and the court reporter took down her
2 answer and I'll just have that read to you now.

3 (Testimony read back)

4 THE COURT: OK. So I think we're ready to proceed.

5 Plaintiffs, would you like to call your next witness.

6 MR. MULHOLLAND: Yes, your Honor.

7 plaintiffs would like to call Mr. Sharma himself.

8 THE COURT: OK. Mr. Sharma.

9 SATINDER SHARMA,

10 called as a witness by the Plaintiffs,

11 having been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. MULHOLLAND:

14 A. Satinder Sharma, S-A-T-I-N-D-E-R, S-H-A-R-M-A.

15 Good morning. I'd like to apologize. I was born and
16 raised in India, so I have a very heavy accent. A lot of
17 people have told me that I'm difficult to understand. So in
18 case I don't come across, I am apologizing in advance. Please
19 let me know and I will repeat myself and clarify.

20 THE COURT: OK.

21 BY MR. MULHOLLAND:

22 Q. Mr. Sharma, isn't it true that you are one of two owners of
23 Pasta & Risotto?

24 A. Yes.

25 Q. Isn't it true that you had the power to hire and fire the

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Sharma - Direct

1 staff at Pasta & Risotto?

2 A. No.

3 THE COURT: The only way this works is the reporter
4 takes everything down is wait for the full question and then
5 you could give your answer.

6 MR. LEHMAN: Your Honor, I still can't hear. So
7 please speak up.

8 THE COURT: Get really close to the mic.

9 All right. If you could repeat your question.

10 Q. Isn't it true, Mr. Sharma, that you had the power to hire
11 and fire staff at Pasta & Risotto?

12 A. No.

13 Q. Do you recall testifying at a deposition with me back on
14 April 16, 2018?

15 A. Yes, I remember.

16 Q. Do you remember testifying differently in regard to that
17 question?

18 A. Could you refresh my memory?

19 Q. Absolutely.

20 MR. MULHOLLAND: Your Honor, I have copies of the
21 deposition transcript. I'd like to bring a copy to the
22 witness.

23 THE COURT: That's fine. You can give it to Mr.
24 Street.

25 (Pause)

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Sharma - Direct

1 Q. Mr. Sharma, if I could direct your attention to page 66.
2 Do you see lines four through 10?

3 A. Yes.

4 Q. Do you still stand by your testimony today that you did not
5 have the power to hire and fire people at Pasta & Risotto?

6 MR. LEHMAN: Your Honor, objection. That's not what
7 lines four through 10 say.

8 THE COURT: Well --

9 MR. MULHOLLAND: Perhaps, I could read it to the
10 Court?

11 THE COURT: Why don't you -- you can do that.

12 MR. MULHOLLAND: Starting at line four.

13 "Q. As an owner of Pasta & Risotto, did you have the power to
14 fire any of these managers?

15 "A. As an owner of Pasta & Risotto, did I have the power?

16 "Q. Yes.

17 "A. As an owner I would say "yes".

18 THE COURT: OK. Did you give that testimony?

19 THE WITNESS: Yes, I did.

20 Q. OK. So were you telling the truth back in April or are you
21 telling the truth today?

22 MR. LEHMAN: Your Honor, that is an objectionable way
23 of phrasing this.

24 THE COURT: Sustained. We've already established that
25 he testified to it before.

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Sharma - Direct

1 MR. MULHOLLAND: Thank you, your Honor.

2 Q. Do you ever hire managers at Pasta & Risotto?

3 A. I beg your pardon.

4 Q. Do you ever hire managers at Pasta & Risotto?

5 A. In Pasta & Risotto I hired the management team and they
6 hired the managers.

7 Q. OK.

8 A. Actually, me and my partner, this is how our businesses was
9 set up. We had investments running from South Jersey all the
10 way up to Manhattan. Back then we had a lot more restaurants.
11 The way it worked was that I was from the restaurant
12 background. We would a broker. Somebody would bring in a
13 specific investment to us. And we would set up a management
14 team and place a corporation that would take care of business.
15 Each one was a separate business entity which was managed by
16 professionals. So we had a general manager. We had a group
17 executive chef and they would basically take care of everything
18 when it came to on the unit level. So my role on the unit
19 level was zero.

20 Q. Was zero? Isn't it true that you signed checks?

21 A. Any business entity that we set up, the bank account has to
22 have a signatory. So by default I would be a signer on the
23 bank accounts. Each unit manager and manager were all
24 signatories. As a back up if they are not available or if they
25 are on leave, I would be asked to leave blank checks. So I

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Sharma - Direct

1 would leave blank checks just so that he operation does not get
2 disrupted.

3 Q. Sir, you signed checks from Pasta & Risotto to pay to the
4 staff members; isn't that true?

5 A. I beg your pardon?

6 Q. Sir, you signed checks for Pasta & Risotto to make payments
7 to the staff members?

8 A. I paid checks for -- I signed blank checks. If you see the
9 checks that you presented yesterday, so you point out --

10 THE COURT: Let me just clarify how we proceed here.
11 The way this works here is he asks a question. You just answer
12 the question. Your lawyer has the opportunity when he is done
13 to ask you whatever follow-up. So you don't have to make any
14 speeches. You can just answer the question and then wait for
15 your lawyer to follow-up.

16 THE WITNESS: Sorry.

17 Q. The answer is "yes" that you signed checks that were made
18 for payment to staff at Pasta & Risotto?

19 A. Yes, I signed checks.

20 Q. So you were aware of how Ms. Mukhina was being paid?

21 A. Not literally, but yes.

22 Q. OK. Isn't it true that you received daily income reports
23 by text from Ms. Mukhina for years while she was employed at
24 Pasta & Risotto?

25 A. It's a group list that comes to all the partners and

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1 general manager and the executive chef every night when every
2 restaurant closes.

3 Q. So the answer is "yes"?

4 A. The answer is, yes, we get daily nightly reports as to
5 which business did how much sale at the end of the night.

6 THE COURT: Which business did how much sales at the
7 end of the night.

8 Q. OK. Sir, and you responded to those texts and noted to
9 Ms. Mukhina that she received on a daily basis; is that
10 correct?

11 A. I beg your pardon?

12 Q. Isn't it true that when Ms. Mukhina would you send you
13 those daily reports, you would often respond to the group
14 message saying that you had received it and thank you?

15 A. My standard response to every text is "thank you and good
16 night".

17 Q. That another way of saying "yes"?

18 A. It's a way of presenting you know thank you very much for
19 taking the time to send it, not just to me, to everybody else
20 as well. I am trying to be, basically, exchanging pleasantries
21 rather than having any other mode -- at that stage.

22 Q. Is it true that you communicated with Ms. Mukhina by text
23 message about your late payments?

24 A. She and I started talking after the business closed.

25 Q. Isn't it true that you would authorize Ms. Mukhina when to

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1 fill-out checks and when to deposit those checks; isn't that
2 true?

3 A. I beg your pardon?

4 Q. Isn't it true that you would authorize Ms. Mukhina to fill
5 out checks and to deposit checks you had signed by text
6 message?

7 MR. LEHMAN: Your Honor, objection; ambiguous.

8 THE COURT: Overruled.

9 A. I would. After the restaurant closed she must be paid. So
10 she would ask me can I deposit the check and I would tell her
11 yes, after the restaurant closed.

12 Q. OK. The answer is again, yes, perhaps?

13 A. After the restaurant closed.

14 Q. Isn't it true that some of those checks bounced?

15 A. I don't remember.

16 Q. Perhaps I can refresh your recollection. I'd like to offer
17 for impeachment purposes for identification purposes what's
18 been marked as Plaintiff's Exhibit Four?

19 THE COURT: OK. You'll give a copy to counsel and to
20 the witness and me.

21 MR. LEHMAN: Your Honor, objection. This is new
22 evidence.

23 THE COURT: Overruled. It's cross. It's for
24 impeachment.

25 MR. LEHMAN: But --

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1 THE COURT: Overruled. We don't have speaking
2 objections in front of the jury.

3 (Continued on next page)

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1 THE DEPUTY CLERK: You have a copy for the Court?

2 MR. MULHOLLAND: Yes.

3 BY MR. MULHOLLAND:

4 Q. Do you recognize these documents?

5 A. This is a text exchange between me and Valeriya.

6 Q. Do you recognize them?

7 A. Yes, I do.

8 Q. Are they an accurate representation of the texts that you
9 two exchanged?

10 A. Yes.

11 Q. Now, does this refresh your recollection about whether any
12 checks bounced that Pasta and Risotto had issued to
13 Ms. Mukhina?

14 THE COURT: Do you want to direct him to a particular
15 page?

16 MR. MULHOLLAND: Yes. The first page.

17 MR. LEHMAN: Which page?

18 MR. MULHOLLAND: The first one.

19 A. Can you please clarify? I'm a little confused.

20 THE COURT: You said you didn't recall whether or not
21 any checks had bounced. So he's showing this document to you
22 to say, does this refresh your memory about whether or not any
23 checks bounced? Don't read from the document, because it's not
24 in evidence, but the question is: Yes or no, does this refresh
25 your memory about whether any checks bounced?

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1 THE WITNESS: This specific one? No.

2 THE COURT: Does it refresh your memory, generally, as
3 to whether any checks bounced?

4 THE WITNESS: I'm thinking about the papers that I
5 went through when -- which was submitted and I saw yesterday,
6 so there were a couple of checks in there, which -- so this
7 specific one? No.

8 THE COURT: But the question is: Do you recall
9 whether any of the checks bounced?

10 THE WITNESS: Yes, I do.

11 THE COURT: You do recall?

12 THE WITNESS: Yes.

13 THE COURT: Did any of them bounce?

14 THE WITNESS: Yes.

15 THE COURT: Yes? Okay.

16 MR. LEHMAN: Your Honor, I'm having trouble hearing
17 because he was talking to you.

18 Please speak into the mic.

19 THE WITNESS: Yes.

20 BY MR. MULHOLLAND:

21 Q. Did you ever review the payroll practices in place at Pasta
22 and Risotto?

23 A. No.

24 Q. Okay. Could you take a look at the last page in that
25 document.

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1 A. Yes.

2 Q. Do you see what's represented there?

3 A. Yes.

4 Q. Does this refresh your recollection about whether you
5 reviewed any of the financial documents pertaining to Pasta and
6 Risotto?

7 A. This was a photograph sent to me by Valeriya.

8 THE COURT: Wait, let's just wait. The question was:
9 Did you review the payroll practices?

10 THE WITNESS: No.

11 THE COURT: Okay. And he said no. He didn't say he
12 didn't recall.

13 MR. MULHOLLAND: Okay.

14 BY MR. MULHOLLAND:

15 Q. Isn't it true that this was a photograph of a salary sheet
16 that Ms. Mukhina had sent you?

17 A. This is a photograph of --

18 THE COURT: Okay. Let's just stop again.

19 These documents are not in evidence, and there's a
20 reason they're not in evidence. So you can't read from the
21 document, but you can ask him: Isn't it true that Ms. Mukhina
22 sent you whatever or that you received whatever?

23 MR. MULHOLLAND: Thank you, your Honor.

24 BY MR. MULHOLLAND:

25 Q. Isn't it true that Ms. Mukhina sent you copies of a salary

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1 sheet documenting her pay?

2 A. No.

3 Q. No? Okay.

4 Isn't it true Ms. Mukhina sent you a photograph of a
5 handwritten ledger that she alleged documented her pay?

6 A. Yes.

7 Q. Isn't it true that you advised her --

8 THE COURT: Wait. What was the answer to that?

9 THE WITNESS: Yes.

10 THE COURT: Yes? Okay.

11 BY MR. MULHOLLAND:

12 Q. Isn't it true that you advised her that you would have
13 Ganesh reconcile the numbers that she had presented to you with
14 his own spreadsheets and prepare checks?

15 A. That's the manager.

16 Q. Sorry?

17 A. That's the manager.

18 Q. Yes. Didn't you tell her you were going to ask him to do
19 that?

20 A. Yes.

21 Q. Isn't reviewing ledgers of pay and asking people to
22 reconcile pay sheets, isn't that dealing with the finances of a
23 company?

24 A. It's directing the person to the right person who's
25 responsible to take care of it.

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1 Q. So Ganesh was a manager, correct?

2 A. Yes, he was.

3 Q. Did Ganesh have the authority to sign a lease on behalf of
4 Pasta and Risotto?

5 A. Beg your pardon?

6 Q. Did Ganesh have the authority to sign a lease on behalf of
7 Pasta and Risotto?

8 A. He never did it, but he could.

9 Q. Oh, he could?

10 A. Yes.

11 Q. So he was a member of the LLC?

12 A. No.

13 Q. So was there a document granting Ganesh that authority?

14 A. To?

15 Q. Did the LLC execute a form granting Ganesh the power to
16 make -- to bind the company to a new lease?

17 A. No.

18 Q. So who signed the lease for Pasta and Risotto?

19 A. Valerie -- sorry, Vajna, Ganesh, Vivek, myself Ajit --

20 THE COURT: Ajit?

21 Q. Isn't it true that some of the managers signed off on
22 checks for Pasta and Risotto?

23 A. Yes.

24 Q. How do they get the authority to do that?

25 A. That's how each and every business was set up. So we would

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1 set up a company that would be handed to the senior management
2 team, and they would appoint people who would manage each and
3 everything for us.

4 Q. Yes, but how did they get the authority?

5 A. The general manager and the management team would give it
6 to them.

7 Q. How did the general manager get that authority?

8 A. That was a meeting between the partners and the different
9 businesses. Different partners, when we set up an entity, we
10 set up a structure where the business would be run by these
11 guys, and they would run with it, they would take care of it.

12 Q. And you were one of those partners who granted the
13 authority to general managers to make -- to sign checks on
14 behalf of Pasta and Risotto?

15 A. Yes, that's correct.

16 Q. I think you have a binder in front of you. I'd like to
17 direct your attention to the first tab.

18 THE COURT: Plaintiffs' Exhibit 1?

19 MR. MULHOLLAND: Yes.

20 Q. I'd like to direct your attention to page 17.

21 MR. MULHOLLAND: Your Honor, if I could publish this
22 to the jury?

23 THE COURT: You may.

24 Q. This is your signature, is it not?

25 A. Yes.

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1 Q. The signatures that appear like this throughout this
2 document are your signature, correct?

3 A. Yes.

4 Q. And the date of this check is January 17, 2014?

5 A. Yes.

6 Q. So the restaurant closed in August of 2015, correct?

7 A. Yes.

8 Q. So it's fair to say that you were interacting with
9 Ms. Mukhina in regards to her pay well before the restaurant
10 closed?

11 A. No.

12 Q. How is that possible?

13 A. As I said, I used to give blank checks in every restaurant.
14 The checks are not written out by me.

15 Q. Do you ever make an effort to find out if people were being
16 paid their overtime?

17 A. Beg your pardon?

18 Q. Did you ever make any effort to find out if people were
19 being paid their overtime?

20 A. The -- I would basically get the financial results, the
21 numbers -- at the end of the night, end of the week, end of the
22 month, end of the quarter -- by the general manager and the
23 executive chef.

24 Q. Why were you getting the financial numbers? I thought you
25 told us you had nothing to do with the finances at Pasta and

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1 Risotto.

2 A. I had to look at my investments. I was answerable to my
3 partners as well. So when the partners would meet every so
4 often to find out what was going on in each of the restaurants,
5 the general manager would present us with the financial
6 information of what was going on in each restaurant.

7 Q. And payroll was a part of that, isn't it?

8 A. We would get the P&L and the balance sheet.

9 Q. So you never reviewed you the payroll? I'm confused.

10 A. Beg your pardon?

11 Q. You never paid attention to the pay that was being issued
12 to the staff at Pasta and Risotto?

13 A. No.

14 Q. Never?

15 A. I'm not sure if "never" is the right answer, but that's how
16 we ran our businesses. I could -- it was physically impossible
17 for me to, you know, look at each and every payroll of each and
18 every business, when you've got half a dozen plus businesses,
19 you know, 50, 60 people working. Back then, times were better,
20 we had so many restaurants, so many employees, so it was
21 physically impossible for me to get involved with any specific
22 information regarding the restaurants. So I would look at it
23 more on a macro level than the micro level.

24 Q. So you're not an employer for any of your many, many
25 restaurants?

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1 MR. LEHMAN: Your Honor, objection; that calls for a
2 legal conclusion.

3 THE COURT: Sustained.

4 Q. Who owns Brick Lane Curry House?

5 A. Me and Ajit now. In the past, we would have, what, four,
6 five partners, at one point even six.

7 Q. Who authorized Brick Lane Curry House to write checks to
8 Ms. Mukhina?

9 A. I don't know.

10 Q. What does Ms. Mukhina have to do with Brick Lane Curry
11 House?

12 A. Both the restaurants were in the same building next to each
13 other, so --

14 Q. They were both owned by you?

15 A. Yes.

16 Q. So is it fair to say --

17 A. They were both our investments.

18 Q. Wouldn't it be fair to say that the reason Brick Lane Curry
19 House cut a check for Ms. Mukhina is because she really worked
20 for you, regardless of which corporate entity was issuing the
21 check?

22 A. I am -- I am assuming that after the business closed, maybe
23 that's why she was issued a check; the general manager issued a
24 check from the other entity.

25 Q. Isn't it true that you held onto some of the time and pay

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1 records for Pasta and Risotto, in storage?

2 A. Beg your pardon?

3 Q. Isn't it true that you were aware that time and pay records
4 for Pasta and Risotto were being held in storage?

5 A. After this lawsuit started, my first question was the
6 standard operating procedures of how we, you know, maintained
7 the records. And I was made to -- I was informed that the
8 records were kept in a storage. That's how I'm aware of it.

9 Q. You never asked your managers, your general managers, how
10 they were paying people?

11 A. They were capable professionals, so I did not want to
12 question their ability. In other words, no news is good news,
13 is the way I was looking at things.

14 Q. Indeed.

15 Were you aware that overtime is the law in the
16 entirety of the United States?

17 A. Yes.

18 Q. I mean, did you ever have any reason to believe that your
19 employees were exempt from overtime payments?

20 A. Beg your pardon?

21 Q. Did you have any reason to believe that your employees were
22 exempt from overtime payments?

23 THE COURT: Overruled.

24 You may answer.

25 THE WITNESS: Okay.

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1 A. Can you just rephrase?

2 Q. Yes. Did you have any reason -- you knew overtime existed,
3 you knew people had to be paid it. I mean, did you have any
4 reason to turn a blind eye to how people were being paid at one
5 of your restaurants?

6 A. No.

7 Q. Did you make any effort to get advice about how you were
8 supposed to pay people at restaurants?

9 A. I --

10 MR. LEHMAN: Your Honor --

11 THE COURT: Overruled.

12 MR. LEHMAN: -- he's assuming it's paid.

13 THE COURT: Overruled.

14 A. Could you rephrase again? Because I do not understand your
15 question.

16 Q. Did you ever seek out advice from anyone about how
17 employees were supposed to be paid at restaurants?

18 A. Are you asking me if I had my CPA or any of these guys tell
19 us how things were to be done?

20 Q. Yes.

21 A. Yes.

22 Q. Did you ever ask an attorney?

23 A. I'm trying to refresh my memory, but each and every
24 business was being run the way it's supposed to run by the GM
25 and those guys, and the CPA would make sure that everything was

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1 in compliance.

2 Q. Well, you don't know if the GM was running the restaurant
3 how it should be run, because you never checked; isn't that
4 true?

5 A. If that's what you are trying to imply, then I would say
6 yes.

7 Q. Well, you're telling us that you own the place but you
8 didn't know how people were being paid even though you were
9 getting daily reports about finances of the business, even
10 though you were writing checks to people, and then you're
11 telling us that you were sure that the GMs were running it
12 smoothly. How do you reconcile those two statements?

13 A. What I'm trying to say is that I would get a number from
14 every restaurant as to which business is doing what on that
15 day.

16 Q. How many restaurants did you have an ownership interest in
17 back in 2014?

18 A. At least six, seven investments back then. At least six,
19 six investments. I have to sit down and refresh, because
20 from -- after 2008, we basically lost everything. So I have to
21 sit down and think, the timeline, which restaurants were open,
22 which were closed.

23 Q. Okay. How about in 2015?

24 A. Around the same, I would say. I'm trying to refresh my
25 memory, how many were open, how many are closed. One by one,

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1 almost all closed, to tell you the truth.

2 Q. I didn't understand.

3 A. One by one, all closed. We had five restaurants in
4 Manhattan. We have zero right now, as of today, in 2018.

5 Q. How long have you been in the restaurant industry?

6 A. In the U.S.? Since 2002.

7 Q. Do you have any idea -- withdrawn.

8 Do you recognize the documents in Plaintiffs' Exhibit
9 3? It's tab 3, page 75.

10 A. Yes.

11 Q. What are they?

12 A. I believe this is a salary sheet.

13 Q. Was this a document that was maintained on a regular basis
14 at Pasta and Risotto?

15 A. I think so.

16 Q. Why do you think so?

17 A. Because I was physically not present there. I saw this
18 when I was given this by my attorney.

19 Q. And you had seen something similar that Ms. Mukhina had
20 sent you by text?

21 A. Yes.

22 Q. Is it your testimony the first time you saw any of these
23 documents was after the restaurant closed?

24 A. Beg your pardon?

25 Q. Is it your testimony that the first time you saw any of

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1 these documents was after Pasta and Risotto had closed?

2 A. I've seen similar documents. If you're asking me about
3 this specific one, I would say, yes, after the business closed.

4 Q. Were you aware of similar documents being maintained at
5 Pasta and Risotto when it was open?

6 A. When it was open?

7 Q. Yes.

8 A. I'm assuming yes.

9 Q. Well, I don't want you to assume. Were you aware that the
10 staff at Pasta and Risotto was maintaining documents that
11 looked like this, back when it was open?

12 A. Yes.

13 Q. How do you know that?

14 A. Again, the standard operating procedures of all the
15 restaurants, they have to keep their own records.

16 Q. Isn't it true that you know that because you've seen it,
17 that you've seen people at Pasta and Risotto preparing these
18 documents, and that they presented them to you?

19 A. No.

20 Q. No?

21 THE COURT: Let me just make sure I understand. So
22 this type of document, not this document, did you ever see this
23 type of document for the Pasta and Risotto restaurant while it
24 was open?

25 THE WITNESS: No.

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1 THE COURT: Okay.

2 BY MR. MULHOLLAND:

3 Q. Why was it that after the restaurant closed, you became the
4 point of contact for Ms. Mukhina to get her late payments?

5 A. The manager, Vajna, directed her to me.

6 THE COURT: The manager?

7 THE WITNESS: The manager, Vajna, directed her to me.

8 THE COURT: Oh, "Vajna" is Vajna?

9 THE WITNESS: Correct.

10 A. Directed her to me.

11 Q. Why is that?

12 A. Because I would do the right thing.

13 Q. And Vajna wouldn't do the right thing?

14 A. The business was closed. I'm assuming Vajna did not do the
15 right thing, by not paying her. If there were five people
16 working there and only one is not paid, obviously the manager
17 did not do the right thing.

18 Q. What happened to Vajna when the restaurant closed?

19 A. Like all of the employees, she was not working for us
20 anymore.

21 Q. That's because she was indeed a employee?

22 A. Beg your pardon?

23 Q. Isn't it true that the reason Vajna directed Ms. Mukhina to
24 you is because she was a fellow employee along with
25 Ms. Mukhina?

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1 A. See, I don't know what the legal definition of "employee"
2 to you is, but, as a general definition, the person who's
3 running the restaurant after the restaurant closes down is not
4 running the restaurant anymore, whatever that means.

5 THE COURT: So Vajna wasn't working for the restaurant
6 after it closed, right?

7 THE WITNESS: Yes.

8 THE COURT: She had no more responsibilities at the
9 restaurant?

10 THE WITNESS: Yes.

11 THE COURT: Okay.

12 Q. Is it your contention that the general managers are
13 responsible for everything that happens when the restaurant is
14 running but the owner, you, was responsible all the time --
15 withdrawn, withdrawn.

16 Was there a general manager at Pasta and Risotto?

17 A. Yes.

18 Q. I'd like to direct your attention you to page 8 of your
19 deposition. I'd like to read from page 8, lines 2 to 5, if I
20 could:

21 "Q. So how did the general managers get their jobs at Pasta
22 and Risotto?

23 "A. There was no general manager in Pasta and Risotto."

24 What happened?

25 A. The reference to context here is "Do you have a general

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1 manager in an 18-seater restaurant?" No.

2 THE COURT: In an 18-seater restaurant?

3 A. No.

4 Q. You just told the jury that there was a general manager at
5 Pasta and Risotto, yet in April you told me that there was no
6 general manager in Pasta and Risotto.

7 A. The general manager was overlooking all the businesses. I
8 mean, maybe -- English is not my first language, so, you know,
9 I'm not coming across properly, but let me explain again how we
10 worked --

11 Q. That's okay, sir.

12 A. Yeah.

13 Q. Isn't it true that you hired Mr. Montoya?

14 A. No.

15 Q. How did Mr. Montoya get his job at Pasta and Risotto?

16 A. We bought a business in New Jersey called Radicchio, and
17 Mr. Montoya was working there as a cook.

18 Q. So when you say "we," does the "we" include yourself?

19 A. Me and my partners.

20 Q. Yes. So how did Mr. Montoya show up to work one day at
21 Pasta and Risotto and start preparing food?

22 A. Could you clarify?

23 Q. Yes. Isn't it true that you hired Mr. Montoya to work at
24 Pasta and Risotto?

25 A. No.

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1 Q. Isn't it true that you invited him to come and be a chef at
2 Pasta and Risotto?

3 A. He was already working for us. I mean, working for the
4 group.

5 Q. Okay. So what you're saying is, because Mr. Montoya was
6 working at a restaurant in New Jersey that you purchased, he
7 was quote-unquote already working for you?

8 A. He was working for the group, for the business.

9 Q. In New Jersey, right?

10 A. Yes.

11 Q. So how did he get from New Jersey to New York, if not for
12 your invitation?

13 A. I am -- if I remember correctly, the general manager at the
14 time, Vivek Deora, was given the responsibility to set up NYC
15 Pasta and Risotto. And he was the one who put the deal
16 together, including Mr. Montoya.

17 THE COURT: Just so you know, you have 31 minutes
18 left, total.

19 MR. MULHOLLAND: Thirty-one minutes? Thank you.

20 BY MR. MULHOLLAND:

21 Q. So is it your testimony you never asked -- you never
22 personally asked -- Mr. Montoya to go from New Jersey to the
23 Manhattan location?

24 A. We may have had a general conversation, but I'm not sure,
25 you know, a general conversation would -- would -- what would

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1 that mean. We talk all the time. He's a chef. I'm from the
2 kitchen as well; I'm a chef too. So we talk about food all the
3 time.

4 THE COURT: I'm sorry, I misspoke. At 10:42, you had
5 31 minutes left, so you have 17 minutes left now.

6 MR. MULHOLLAND: Okay.

7 No further questions. Thank you, your Honor.

8 Thanks for your time.

9 THE WITNESS: Thank you.

10 CROSS-EXAMINATION

11 BY MR. LEHMAN:

12 Q. Hi, Mr. Sharma.

13 A. Hi.

14 Q. Would you explain, to me and to the jury and to the judge,
15 how your investments work? And please speak slowly and loudly
16 for everyone.

17 A. So I went to school. I was a chef by profession, so that's
18 how I got into this business. So we got first place in 2002.
19 And after that, what happened was, times were good, we would --
20 brokers and other people would get offers to us for places. So
21 we would buy a restaurant, you know. The CPA and the attorneys
22 would go to work, they would set up an entity that would run
23 the show. We had a management people that would basically take
24 care of everything when it came to the operating of all of
25 these businesses.

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Sharma - Cross

1 It was physically impossible, back in the day, when I
2 had businesses from South Jersey all the way to five businesses
3 in Manhattan, it was physically impossible for me to be at
4 every place or even visit all of them even in a week. So we
5 had professionals who knew what to do to take care of it, but
6 those were the days. From there, today, we are virtually down
7 to zero.

8 So we would set up a business, the deal would come to
9 us, set up a -- the CPA and the attorney would set up a
10 corporation, we would hire a management team, people who had
11 Master's in this business and people who had culinary school
12 education, people who had been doing this all their life, so
13 they would be given the responsibility as per the decision made
14 by me and my partners to run the businesses, and they would
15 take care of the businesses. That's how all our businesses
16 were set up.

17 The perfect way to put it across is: I'm Indian, with
18 a heavy accent, owning an Italian restaurant. It only happens
19 in New York. Why would I get into the Italian restaurant
20 business if it was not good investment, back in the day? It
21 was a 16-/17-year-old Italian restaurant, opened by an older
22 Italian gentleman, Aldo Ciapolotte, who was retiring.

23 Q. Just slow down.

24 A. It was a 16-/17-year-old Italian restaurant in New Jersey,
25 owned by an older Italian, older Italian gentleman, Aldo

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Sharma - Cross

1 Ciopolotte, who was retiring. So a broker and a mutual friend,
2 attorney, approached us that, you're in the business of
3 investing into restaurants, would you like to add this to your
4 portfolio? That's how I got into the Italian restaurant
5 business.

6 Q. Do you remember when you purchased Radicchio?

7 A. 2009 or '10, '8 or '9, I think so.

8 Q. Did you, as I'm saying, purchase it alone or --

9 A. No, no. See, I was -- yeah, we had partners.

10 Q. I know you want to tell your story.

11 Who did you purchase it with?

12 A. Ajit Bains.

13 Q. Did you purchase it or did you set up an LLC?

14 A. We set up a company.

15 Q. Did you set up companies for all your investments?

16 A. Yes.

17 Q. So then let's focus on the restaurant here. Who was
18 responsible for everything that happened in the restaurant?

19 A. The company.

20 Q. The company was responsible?

21 Was there any individual person who you, through the
22 LLC, hired to be responsible for that restaurant?

23 A. The LLC had the general manager; the general manager had
24 the manager; the manager running the show was --

25 THE COURT: Wait. Can you just speak more slowly?

I97KFLO2

Sharma - Cross

1 The LLC had a general manager. So that general manager was for
2 all of the restaurants?

3 THE WITNESS: Yes.

4 BY MR. LEHMAN:

5 Q. What was his or her name?

6 A. Vivek Deora, V-i-v-e-k D-e-o-r-a.

7 Q. That's the first and last name?

8 A. Yes, that's correct.

9 Q. Who was underneath that general manager who was overseeing
10 all the investments? Was there someone else in each business?

11 A. Yes.

12 Q. Who was that? Or what was their title?

13 A. The restaurant manager.

14 Q. Was there a restaurant manager at Radicchio on 53rd Street?

15 A. Yes.

16 Q. Who was that?

17 A. There were a few, but when we closed, the last manager was
18 Vanja Bojic.

19 Q. Could you please spell that?

20 A. V-a-n-j-a B-o-j-i-c. I think so.

21 Q. Did you hire anyone else to help with -- well, did you hire
22 anyone, or did the LLC hire people?

23 A. We would set up a business, set up a corporation. The GM
24 and the group executive chef, you know, were given the
25 authority by me and Ajit, whoever the partner was, because we

I97KFLO2

Sharma - Cross

1 had different partners in different businesses, and they would
2 run with it, they would take care of everything else.

3 Q. Do you have the deposition that Mr. Mulholland handed to
4 you in front of you?

5 A. Yes.

6 Q. Could you please turn to page --

7 THE COURT: No, you can't. Only if it's an admission.
8 He's not adverse to himself. He can't --

9 MR. LEHMAN: I'm not asking for it to be admitted.
10 I'm asking him to use it to refresh his recollection of what he
11 spoke at --

12 THE COURT: He hasn't said he doesn't recall.

13 BY MR. LEHMAN:

14 Q. Do you recall everything that you said at the deposition?

15 THE COURT: No. We need a precise question that he
16 doesn't recall, and then, in that case, you could have him
17 refresh it.

18 BY MR. LEHMAN:

19 Q. Do you recall saying --

20 THE COURT: No.

21 MR. LEHMAN: I just want --

22 THE COURT: It's hearsay. He's on the stand. You can
23 ask him a question directly but only an --

24 Q. Do you remember after -- you said, as an owner, I would
25 say, yes, do you remember the sentences that you said right

I97KFLO2

Sharma - Cross

1 after that during the deposition?

2 THE COURT: No.

3 MR. LEHMAN: I'll move on. I don't --

4 THE COURT: Just ask him the question. Not about the
5 deposition. Ask him whatever the factual question is.

6 BY MR. LEHMAN:

7 Q. During the deposition, did you ever --

8 THE COURT: No, not during the deposition. About the
9 restaurant.

10 MR. LEHMAN: I appreciate Mr. Mulholland not
11 guffawing.

12 Q. Do you know who Vajna Bojic is?

13 A. The manager of Radicchio Pasta and Risotto.

14 Q. What were her responsibilities managing?

15 A. To take care of everything in the restaurant.

16 Q. Did she have the authority to sign checks?

17 A. Yes.

18 Q. Do you remember if she ever filled out checks?

19 A. Yes.

20 Q. Why would she fill out checks?

21 A. Because she was running the show.

22 Q. I'm sorry, I couldn't hear you.

23 A. Because she was running the show. She had the authority to
24 do everything in that specific unit.

25 Q. How often did you visit the restaurant on 53rd Street?

I97KFLO2

Sharma - Cross

1 A. Once a week maybe, maybe twice.

2 Q. How much total interaction did you have, over four years,
3 with the plaintiff, who is --

4 A. If I had to add it all, put together, probably maybe two
5 hours, put together, between all the time that I owned that
6 business.

7 Q. Is that for each individual plaintiff?

8 A. Both of them put together.

9 Q. Do you mean face-to-face time, or are you including text
10 time?

11 A. Just interaction while the business was open. I would say
12 there was more interaction after the business closed than
13 during the business open.

14 Q. You had more what?

15 A. More -- she would have texted me after the business closed,
16 but my interaction with her during the business was virtually
17 zero, because I was never there.

18 Q. So after the business closed, something happened?

19 A. After the business closed, she approached me, asking me
20 about not being paid.

21 Q. Not being paid by who?

22 A. By the restaurant.

23 Q. By the restaurant?

24 Did you feel as if you had any legal obligation to
25 personally pay her?

I97KFLO2

Sharma - Cross

1 A. The business -- the business has to pay her. That's,
2 that's, you know, the business has to pay her. She's owed;
3 she's got to be paid by the business.

4 Q. So do you believe that the business owed her money when it
5 closed?

6 A. I have no reason to feel she is lying; yes.

7 Q. So you believe that the business owed her money after it
8 closed?

9 A. Yes.

10 Q. Would you like her to receive that money?

11 A. Yes.

12 Q. Do you know how much money she's asked from you?

13 MR. MULHOLLAND: Objection.

14 THE COURT: Sustained.

15 Q. Would you like -- well, let me repeat the question.

16 Would you like her to receive the money that she is
17 owed by the business?

18 A. Yes.

19 Q. So why haven't you found a way for her to get that money?

20 A. I was trying to do that after the business closed, but they
21 ended up suing me. I have lost my shirt after that. I paid a
22 even lot more in legal fees than what I actually owed her. In
23 fact, I tried telling her that, I'd rather pay the money to
24 you, than throw it into legal fees, but she refused to talk to
25 me.

I97KFLO2

Sharma - Cross

1 Q. Well, how much personal debt do you have right now?

2 MR. MULHOLLAND: Objection; relevance.

3 MR. LEHMAN: Whether or not he could pay her.

4 THE COURT: Sustained, sustained.

5 Q. Sitting here today, would you still like to find a way for
6 her to get the money that she is owed?

7 A. Yes.

8 Q. Did you ever have any interaction with the other plaintiff?

9 A. No. In fact, I had to put a face to the name. And I asked
10 Danny, sitting there, is this the gentleman, because, you know,
11 as I said, my total interaction -- if anybody had seen that
12 restaurant, I'm a big guy, so is Danny, both of us standing in
13 that restaurant, nobody can move. So it was physically
14 impossible for me to even stand in that restaurant. All the
15 more reason for me not to be there.

16 THE COURT: I'm sorry, why couldn't you stand in the
17 restaurant?

18 THE WITNESS: It was so small, your Honor. If both of
19 us fat guys stand there, we basically block the whole place,
20 nobody could get in and out.

21 THE COURT: I see. Thank you.

22 Q. How many seats were in the restaurant?

23 A. Eighteen.

24 Q. Are you able to physically describe how big it was, using
25 items in the courtroom?

I97KFLO2

Sharma - Cross

1 A. The size? This size.

2 Q. By that, you are pointing to the jury box?

3 A. Yes, the jury box. That was the size of the restaurant.

4 Q. Do you remember whether or not Ms. Mukhina ever texted you
5 a picture of something entitled "Payroll"?

6 A. Yes.

7 Q. Did she do that before or after the restaurant closed?

8 A. After the restaurant closed.

9 Q. Do you remember if she ever texted you that Vajna Bojic was
10 her friend?

11 A. Yes.

12 Q. What else did she say in that text message, if you
13 remember?

14 MR. MULHOLLAND: Objection; hearsay.

15 THE COURT: I'll allow it.

16 A. My immediate reaction was that, you know, the managers have
17 to be responsible. And her reaction was, Vajna is my friend,
18 please do not talk to her.

19 Q. What was the last part?

20 A. Vajna is my friend, please do not talk to her.

21 I would ask one thing in --

22 Q. No, don't ask.

23 A. Sorry.

24 Q. Did you hire either plaintiff?

25 A. No.

I97KFLO2

Sharma - Cross

1 Q. Did you have the power to fire either plaintiff?

2 A. No.

3 Q. Why didn't you have the power?

4 A. As I told you, the way we set up these businesses, we would
5 set up a company, we would empower the general manager and the
6 group executive chef to take care of everything from there on.
7 So I was -- it was not in my hands. Legally, it was not -- I
8 was not allowed do that. I have to go back to my partner,
9 Ajit, before I did anything.

10 Q. Have you ever said that you had the power to hire someone?

11 A. As a general conversation, maybe, but no.

12 Q. Did you ever set the schedules?

13 A. No.

14 Q. Did you determine the pay rate of each plaintiff --

15 A. No.

16 Q. -- or any employee of the restaurant?

17 A. No.

18 Q. Did you ever direct them how to clean the place?

19 A. No.

20 Q. Did you ever direct them how to interact with customers?

21 A. No.

22 Q. Did you ever determine anything with regard to their
23 workplace conditions?

24 A. No.

25 Q. Did you ever make any suggestion to them about the

I97KFLO2

Sharma - Cross

1 workplace conditions?

2 A. Not that I remember, no.

3 Q. Did you know how much any employee got paid per hour?

4 A. No.

5 Q. Did you know if any employee had a salary?

6 A. No.

7 Q. Do you know where the records for the company are?

8 A. For NYC Pasta? No.

9 Q. Yes, for the restaurant.

10 A. No. In fact, the restaurant was closed down by Valeriya
11 and Vajna, and I have not been able -- I didn't know two years
12 later I'd get sued. When I asked where the records were,
13 everything was put into the storage. That's what I was told.
14 That's what I told the attorney as well.

15 Q. So you tried to find these records?

16 A. I did.

17 Q. What date was the store closed on?

18 A. I believe 15th of August, 2015.

19 Q. And who closed the restaurant? Who wrapped it all up?

20 A. Valeriya, Vajna.

21 THE COURT: Who and Vajna?

22 THE WITNESS: Valeriya and Vajna.

23 MR. LEHMAN: The plaintiff and Vajna.

24 Q. Again, why did you leave checks with your signatures on
25 them at work?

I97KFLO2

Sharma - Cross

1 A. Because I wanted to do the right thing. If -- I am one of
2 the signers. If the general manager is not there, if the
3 manager is not there, you know, I would be asked by the
4 accountant -- in fact, I'll give you the name, Ganesh, who was
5 also part of it -- he would tell me as a backup, you know,
6 could you just go and drop or sign a few checks there. And I'd
7 do that.

8 Q. Did you ever give Ms. Mukhina blank checks -- did you ever
9 give her blank checks at any point in time?

10 A. Yes.

11 Q. When did you give those to her?

12 A. After the business closed.

13 Q. Why would you give blank checks to her?

14 A. So when it was brought to my knowledge that the business
15 owed her money, I went back to my partner and informed him
16 that, you know, there is one employee who is owed money. To
17 date, I was not given the records by Vajna or anybody else.
18 I'm going 100 percent by what she said.

19 So I, as I said, I asked Ganesh to reconcile it,
20 because I did not know, I did not have access, I did not keep
21 any of the records. So whatever she would message me, I'd say,
22 okay, you know what, I believe you 100 percent, what is owed to
23 you. I went back to my partner and said, listen, the business
24 is closed, the bank is closed, what do we do, we've got to take
25 care of these people. So, you know, we took a decision that

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Sharma - Cross

1 instead of her having to look for me chase anybody, you know,
2 we left. In fact, I did not even meet her. I just left an
3 envelope with a whole bunch of blank checks, telling her that,
4 listen, I'd speak to my partner, arrange the money, and take
5 care of whatever is -- whatever the business owes you.

6 So by doing the right thing, I feel I'm being punished
7 because I was a nice guy.

8 Q. But let's not...

9 Why didn't you just authorize her to fill out the
10 check for the exact amount that she was owed by the restaurant?

11 A. Beg your pardon?

12 Q. Why didn't you just say, pay yourself everything that
13 you're owed by the restaurant? She had blank checks.

14 A. I should have the money to tell her to do that. I'd love
15 to do that. If I would have had the money, I would say, write
16 it down and finish it, just close the chapter.

17 Q. So it was impossible for pay her?

18 A. Yes.

19 Q. The money owed by the restaurant?

20 A. Yes.

21 Q. Did the plaintiff, prior -- the other plaintiff,
22 Mr. Carrasco, did he, prior to the lawsuit, ever claim that you
23 owed him any money?

24 A. Never. In fact, even --

25 Q. Did any other employee from this restaurant ever come to

I97KFLO2

Sharma - Cross

1 you and say, you owe me money, I didn't get paid?

2 A. No.

3 Q. Do you know if anyone directed Ms. Mukhina to contact you?

4 A. Vajna.

5 Q. I'm sorry?

6 A. Vajna.

7 Q. Vajna?

8 A. Let me clarify one thing: When Radicchio had closed, there
9 were a couple of other employees who were owed a couple of
10 checks, and Vajna had informed me that she is taking care of
11 that. And I am believing they were all taken care of it
12 because I did not hear of it from Vajna or the GM after that.
13 So I'm assuming that it was all done.

14 In fact, let me clarify: I think I'm certain it was
15 all done, because after this whole fiasco started, I asked, I
16 checked, and I don't think there's anybody who was working
17 there that's owed money.

18 Q. Did you instruct anyone to make sure that the LLC was
19 following the law?

20 A. The general manager.

21 Q. Whose name was?

22 A. Vivek Deora.

23 Q. Was it important to you that he follow the law?

24 A. Yes.

25 Q. Why was it important to you that he follow the law?

I97KFLO2

Sharma - Cross

1 A. Because the same law firm had sued me once before. And,
2 you know, that's -- in fact, I even went and met Mr. Michael
3 Faillace and thanked him. Because of him, I got the whole
4 house in order and did whatever he expected me to do, when I
5 had paid him a big settlement the very first time he came after
6 me.

7 Q. Were you surprised to find out that the restaurant, the
8 company, was not following the law?

9 A. Yes.

10 Q. Do you want all your companies to follow the law?

11 THE COURT: The only issue that's still for the jury
12 is the issue of whether he was an employer. So I think we're
13 getting a little far afield. The willfulness issue is not in
14 anymore. So please move on.

15 Q. Do you speak Spanish?

16 A. No.

17 Q. If you wanted to communicate with the other plaintiff,
18 would it be possible for to you communicate with him?

19 A. No.

20 MR. LEHMAN: No more questions, your Honor.

21 THE COURT: All right.

22 Anything more?

23 MR. MULHOLLAND: Very briefly.

24 THE COURT: All right.

I97KFLO2

Sharma - Redirect

1 REDIRECT EXAMINATION

2 BY MR. MULHOLLAND:

3 Q. So, Mr. Sharma, it's fair to say that there were other
4 employees who approached you about back pay; isn't that
5 correct?

6 A. No.

7 Q. No? So Natalia Kokovaya never approached you about money
8 that the business owed her?

9 A. Vajna had told me about a couple of other employees, and
10 Vajna told me she took care of it.

11 Q. What about Alina Zulina?

12 A. As I said, the name rings a bell, but, as I told you, Vajna
13 told me she took care of everything when the business was
14 closed.

15 Q. It sounded like -- when your attorney was asking you
16 questions, it sounded like you were again saying you didn't
17 have the power to hire and fire anyone at Pasta and Risotto.
18 Is that true?

19 A. Yes.

20 Q. But didn't we just go over that? Wasn't that the first
21 question I asked you in my examination, and we saw that you
22 indeed have the power to hire and fire, as you told me in your
23 deposition?

24 A. I had the power to hire the general manager. I had the
25 power to set up a business. I had the power to empower the

I97KFLO2

Sharma - Redirect

1 general manager and the group executive chef to run the
2 businesses, hire and fire people at the restaurant level. I
3 also said it was physically impossible for me to be running so
4 many businesses. I did not even know the name of 99 percent of
5 my employees, because there were so many of them.

6 Q. Okay. So you had the power to hire and fire people at
7 Pasta and Risotto; that's not an issue anymore?

8 A. No, no.

9 Q. No?

10 A. No.

11 Q. Okay. So let's turn to page 66 for a second time, in your
12 deposition. Line 4: "Again, as an owner of Pasta and Risotto,
13 did you have the power to fire any of these managers?

14 "A. As an owner of Pasta and Risotto, did I have the power?

15 "Q. Yes.

16 "A. As an owner, I would say yes."

17 A. The general manager.

18 Q. Why don't we turn to page 7 of your deposition.

19 A. They have themselves said I do not hire --

20 THE COURT: There is no question.

21 THE WITNESS: Sorry.

22 Q. Why don't you turn to page 7.

23 A. Page?

24 Q. Page 7.

25 Question at line 5:

I97KFLO2

1 "Q. Did you hire the management team?

2 "A. Good question. I mean, I'm trying to remember. A lot of
3 them are alone through references or whatever, so, yeah."

4 That sounds --

5 A. The management team, the general manager and the group
6 executive chef.

7 Q. If you could turn to page 19 of your deposition.

8 MR. MULHOLLAND: Withdrawn, withdrawn.

9 No further questions, your Honor.

10 THE COURT: Okay.

11 You may be excused.

12 (Witness excused)

13 THE COURT: Do you have another witness,
14 Mr. Mulholland?

15 MR. MULHOLLAND: No, your Honor. Plaintiff rests.

16 THE COURT: You rest?

17 MR. MULHOLLAND: Yes.

18 THE COURT: Okay.

19 Defense case?

20 MR. LEHMAN: Yes.

21 I'd like to call Mr. Montoya.

22 THE COURT: Okay.

23 MR. LEHMAN: Your Honor, Mr. Montoya speaks Spanish.

24 THE COURT: All right. Where is the interpreter?

25 MR. MULHOLLAND: These are plaintiffs' interpreters.

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1 These are plaintiffs' interpreters. I hired them to take care
2 of Mr. --

3 THE COURT: Ah. Well, why don't we go ahead and use
4 the interpreter. That way, your client can understand as well,
5 but we will be able to also.

6 MR. MULHOLLAND: Sure.

7 THE COURT: If you want to send Mr. Lehman a small
8 bill for a few minutes of interpreter time, I'm sure he'd be
9 happy to pay it.

10 FELIX D. MONTOYA,

11 called as a witness by the Defendants,
12 having been duly sworn, testified through the
13 Spanish interpreter as follows:

14 THE COURT: We've already sworn this interpreter, or
15 no?

16 THE DEPUTY CLERK: No.

17 THE INTERPRETER: Yes.

18 THE COURT: You can do it again.

19 THE DEPUTY CLERK: Actually, she's good.

20 THE COURT: You interpreted two days ago?

21 THE INTERPRETER: Yes, I did.

22 THE COURT: Okay. Thank you.

23 THE DEPUTY CLERK: Just state your first and last
24 name, please.

25 THE WITNESS: My name is Felix D. Montoya.

I97KFLO2

Montoya - Direct

1 DIRECT EXAMINATION

2 BY MR. LEHMAN:

3 Q. Hello, Mr. Montoya.

4 A. Hello.

5 Q. Do you know of a restaurant named Radicchio?

6 A. Yes.

7 Q. Are there more than one restaurants named Radicchio?

8 A. Yes.

9 Q. Have you ever worked for a restaurant named Radicchio?

10 A. Yes.

11 Q. When did you start working for that restaurant?

12 A. 1995.

13 Q. Where was that restaurant located?

14 A. 34 Franklin Avenue, New Jersey, Ridgewood.

15 Q. Did you ever work at another restaurant named Radicchio?

16 A. Yes.

17 Q. Where was that restaurant located?

18 A. 53rd Street in Manhattan.

19 Q. When did you start working for that restaurant?

20 A. I'm not sure; 2009, 2010.

21 Q. When did you stop working for that restaurant?

22 A. When it was closed.

23 Q. Do you know if there was anyone in charge of the restaurant
24 on 53rd Street?

25 A. Yes; the managers.

I97KFLO2

Montoya - Direct

1 Q. Who was the last manager that you had?

2 A. The manager, Vajna.

3 Q. Who would pay you at the restaurant?

4 A. The managers.

5 Q. Did Vajna ever pay you?

6 A. Yes.

7 Q. Did you ever see any records at the restaurant?

8 A. I'm not sure.

9 Q. Did you ever see anywhere any records that belonged to the
10 restaurant?

11 A. Records?

12 Q. Payroll records.

13 A. No.

14 Q. Did you ever set the schedule for the plaintiff
15 Mr. Carrasco?

16 A. No.

17 Q. Did you ever give him his schedule?

18 A. Yes.

19 Q. Why did you give him the schedule?

20 A. I understand a little bit more English than he does.

21 Q. So why does that matter?

22 A. Because the other people there only spoke English and he
23 spoke Spanish.

24 Q. Did you ever determine the pay of him?

25 A. No.

I97KFLO2

Montoya - Direct

1 Q. Did you ever determine the pay of the other plaintiff?

2 A. No.

3 Q. Did you ever set her schedule?

4 A. No.

5 Q. Did you hire either of them?

6 A. No.

7 Q. With regard to Mr. Carrasco, did you ever discipline him?

8 A. Yes.

9 Q. Did you ever tell him to clean up?

10 A. Yes.

11 Q. Why did you tell him to clean up?

12 A. First of all, because we had to keep everything clean and
13 in order, because the Health Department could show up at any
14 time. Cleaning is a routine, so you have to be on top of
15 people, saying things like, don't do that, don't put that
16 there, put this here, put this over there, do not mix the old
17 stuff with the new stuff, you should cut this at this time, not
18 at that time.

19 And the most important thing was the cell phone. And,
20 you know, people want to be on the phone all the time -- and
21 not only him, the dishwashers, the other cook -- so we had to
22 have a routine, and I set the example, I turned off my phone,
23 and that is the way I did, that is discipline, because the
24 biggest challenge for me was to be a grade A from the Health
25 Department.

I97KFLO2

Montoya - Direct

1 Q. Why do you care?

2 THE COURT: Why do you care?

3 MR. LEHMAN: He cares because he's the employer or
4 designated manager --

5 THE COURT: No. Let's move on. Ask another question.

6 MR. LEHMAN: I understand, your Honor. I'm pausing.

7 Q. How often did you see Mr. Sharma at the restaurant that we
8 were talking about on 53rd Street?

9 A. Sometimes I would see him once a week, maybe sometimes
10 twice a week.

11 Q. Did Mr. Sharma ever hand you a check for payment?

12 A. After we closed, yes.

13 Q. Before you closed, did he ever hand you a check?

14 A. No. It was the managers.

15 Q. Who was the last person, before it closed, that handed you
16 a check?

17 A. The manager, Vajna.

18 Q. Were you always paid in checks?

19 A. Yes.

20 MR. LEHMAN: No more questions, your Honor.

21 THE COURT: Okay.

22 Cross?

23 MR. MULHOLLAND: Yes. Thank you, your Honor.

I97KFLO2

Montoya - Cross

1 CROSS-EXAMINATION

2 BY MR. MULHOLLAND:

3 Q. Mr. Montoya, isn't it true that it was Mr. Sharma who
4 invited you to move from the New Jersey Radicchio to the
5 Manhattan Radicchio?

6 A. I'm not sure. I do remember that there was a meeting,
7 Vivek was there, and the executive chef -- what was his name --
8 I always get his name confused, Pravin, and Mr. Sharma.

9 Q. Is it fair to say that Mr. Sharma was in control of the
10 Manhattan Radicchio Pasta?

11 A. In my opinion, no. That's why we didn't last.

12 MR. MULHOLLAND: I'd like to hand the witness a copy
13 of his deposition from May 15th. If we could turn to page 16.

14 THE INTERPRETER: I'm sorry, I didn't hear that.

15 THE COURT: Does Mr. Lehman have a copy as well?

16 MR. MULHOLLAND: Yes.

17 Q. If we could turn to page 16.

18 MR. MULHOLLAND: Could the translator translate lines
19 13 through 24.

20 (Pause for translation)

21 Q. Let me read the passage in English. Starting on line 13.

22 "Q. Who was the quote-unquote 'they' that asked you to work at
23 the New York restaurant?

24 "A. Sati.

25 "Q. Anyone else besides Sati ask you to go to New York?

I97KFLO2

1 "A. It was just Sati, the one in New York and Vivek, because
2 they were the ones who had all the control.

3 "Q. Did Sati control the New York restaurant?

4 "A. Are you asking me did he control it? I would imagine so,
5 yes."

6 THE COURT: You're entitled to just read that into the
7 record, or you can ask him a question about it, either one.

8 MR. MULHOLLAND: Sure.

9 BY MR. MULHOLLAND:

10 Q. Is there any reason why your testimony changed from May of
11 2018 to today, regarding whether Sati controlled the restaurant
12 and whether Sati invited you to the New York restaurant?

13 A. I think that if he had had or been in more control, we
14 would not have had to close, but...

15 Q. But what?

16 A. But we closed.

17 Q. Okay.

18 THE COURT: You have nine minutes.

19 MR. MULHOLLAND: Okay.

20 No further questions, your Honor. Thank you.

21 THE COURT: You may step down. Thank you.

22 (Witness excused)

23 THE COURT: Any further witnesses? Does the defense
24 rest?

25 MR. LEHMAN: Yes, your Honor.

I97KFLO2

1 THE COURT: All right.

2 Why don't we take a short break. Then I think we'll
3 instruct the jury.

4 JUROR: I have a question, but I don't have paper.

5 THE COURT: Oh, okay. A question for one of the
6 witnesses or just for me?

7 JUROR: I --

8 THE COURT: It doesn't matter. We'll give you a piece
9 of paper, and you can ask it.

10 JUROR: Okay. Thank you.

11 THE DEPUTY CLERK: Anyone else?

12 JUROR: A piece of paper.

13 THE DEPUTY CLERK: Okay.

14 (Pause)

15 THE COURT: Okay. There are two questions, and
16 they're questions for Mr. Montoya. I think I know the answer,
17 but I don't give evidence, so if it's okay, why don't we just
18 have Mr. Montoya answer those two questions. But, actually, I
19 should tell the lawyers what they are first, so let me meet the
20 lawyers at the sidebar with the reporter. I'll tell you the
21 two questions, and then I'll ask Mr. Montoya.

22 (Continued on next page)

23

24

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(At the sidebar)

THE COURT: So the question is: Were there other chefs above Mr. Montoya?

And the other question is: Was he considered the executive chef or just an employee?

I would leave out the "or just an employee" part of the question. I would ask the other two questions just because I think there's a lack of clarity about the executive chef versus chefs in the various restaurants.

MR. LEHMAN: That's --

MR. MULHOLLAND: That's fine.

THE COURT: All right. Thank you.

(Continued on next page)

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(In open court)

THE COURT: Mr. Montoya, we have just a couple of questions. You don't have to come back up here if you don't want. You can stand there and answer them, if you don't mind.

MR. LEHMAN: He doesn't speak English.

THE COURT: I know. Actually, he speaks more English than Mr. Carrasco, so he may have understood that.

The first is: Were there other chefs above you or who were your boss?

THE WITNESS: Yes.

THE COURT: Who was that?

THE WITNESS: Pravin.

THE COURT: Was he the executive chef?

THE WITNESS: (In English) Yes.

(Through Interpreter) Yes, he was the executive chef.

THE COURT: So he was the executive chef over all of the restaurants in the group?

THE WITNESS: Yes.

THE COURT: And you worked only in the restaurant on 53rd Street; is that right?

THE WITNESS: Yes.

THE COURT: Were there any other chefs who worked at the restaurant at 53rd Street?

THE WITNESS: Yes; one.

THE COURT: Was he your equal, or was he your boss, or

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1 were you his boss?

2 THE WITNESS: He was my --

3 THE INTERPRETER: I can't remember.

4 THE WITNESS: -- the subordinate.

5 THE COURT: All right. Thank you.

6 THE WITNESS: (In English) You're welcome.

7 THE COURT: Now we can take our break, probably about
8 ten minutes.

9 We've also ordered food for you for lunch. It's
10 probably not there yet, but the plan is for me to give you the
11 final instructions, and then we'll have brief closing
12 arguments, and then you'll deliberate.

13 Okay? So let's take our break.

14 (Continued on next page)

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1 THE COURT: So we need to have a quick discussion
2 about the charge and about the verdict form but we probably all
3 need a little break. So, which did you want to do first?

4 MR. MULHOLLAND: I would ask to take a break first.

5 THE COURT: Let's do this. Why don't we, I think
6 we've given you copies of the charge and basically, all I did
7 was take out the part about "willfulness" and any reference to
8 there being two issues. The only changes are within the last
9 two pages. I took all the "willfulness" out. Then when we
10 come back we could talk about it.

11 I'll also warn you I already have copies of all these
12 made. If there are any corrections we'll likely have to do it
13 in ink because I've already made copies because it takes a
14 while to do that.

15 Let's adjourn for ten minutes and then we'll come back
16 and have a chat.

17 (Recess)

18 THE COURT: Please be seated.

19 Are there any comments with regard to the charge?

20 MR. MULHOLLAND: No, your Honor.

21 MR. LEHMAN: No points, your Honor.

22 THE COURT: OK. The verdict form. I got Mr. Lehman's
23 e-mail yesterday and we've eliminated the "either" or "both"
24 language that he thought was potentially confusing because it's
25 not relevant any more. He had requested that I include the

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1 "burden of proof" in the questions and I won't do that. But
2 what I will do is first of all in the instruction I have
3 included it. And second, when I go over the verdict form I
4 will remind them when it says "has the plaintiff Carrasco
5 shown", in each case that means "shown by a preponderance of
6 the evidence".

7 Any comments on the verdict form? Any other comments
8 on the verdict form?

9 MR. LEHMAN: Your Honor, I just need to address one
10 thing for the record perhaps on appeal. I asked counsel for
11 the original checks he said as a courtesy he would give them to
12 me and now he has declined to do so.

13 MR. MULHOLLAND: I suppose to make sure the record on
14 appeal clear, I asked my client to bring the checks both on the
15 first day of trial and today. She did. The first time
16 Mr. Lehman reached out to me to ask to examine them was
17 literally one minute ago. I think since both cases are closed
18 it's not really prudent. Well, my client doesn't have to her
19 personal property at this point. They were available. It was
20 never asked.

21 THE COURT: OK. Thank you.

22 All right. So why don't we put a copy of the
23 instructions on each of the jurors' chairs, just the
24 instructions on the verdict sheet.

25 (Pause)

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1 MR. LEHMAN: May I ask a question?

2 THE COURT: How long do each of you want?

3 MR. LEHMAN: Is it plaintiff, defendant, rebuttal by
4 plaintiff?

5 THE COURT: I actually, leave it up to plaintiff.
6 Since plaintiff has the burden you can either go second and use
7 all your time at once or you can reserve part of your time for
8 rebuttal.

9 MR. MULHOLLAND: I'd like to reserve a small part for
10 rebuttal.

11 THE COURT: How much time do you think you'd need?

12 MR. LEHMAN: Your Honor, because we were -- I am
13 particularly good about -- I don't know how many minutes I have
14 left.

15 THE COURT: Forget the time. For closing arguments I
16 just whatever amount of time -- we have one issue but you
17 probably want to talk about that. So how long do you think you
18 need?

19 MR. MULHOLLAND: Couldn't be more than 30 minutes
20 total.

21 THE COURT: That seems long. So 20 minutes total each
22 side.

23 MR. MULHOLLAND: Thank you, your Honor.

24 THE COURT: How much time do you want to reserve?

25 MR. MULHOLLAND: Five minutes.

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1 THE COURT: OK. So Mr. Street, just so you know,
2 summations will be 20 minutes total each side, then the
3 plaintiff will be 15 minutes, then defendant 20 minutes and
4 plaintiff five minutes.

5 You can get the jury and I am about to charge the
6 jury.

7 (Jury present)

8 THE COURT: You may be seated.

9 Ladies and gentlemen, I put a copy of my instructions
10 on your chairs and I'm about to read them to you. You can
11 follow along and underline and mark things if you'd like or if
12 you're better just listening, you can put it aside and not look
13 at it but these are yours and shred them at the conclusion of
14 deliberations which you'll be able to bring them into the jury
15 room.

16 Members of the jury, you have now heard all of the
17 evidence in this case. You are about to hear the final
18 arguments of the parties. Then you will undertake your final
19 and most important function as jurors. You've paid careful
20 attention to the evidence and I am confident that you will act
21 together with fairness and impartiality to reach a just
22 verdict.

23 My duty at this point is to instruct you on the law.
24 It is your duty to accept these instructions of law and apply
25 them to the facts as you determine them, just as it has been my

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1 duty to preside over the trial and decide what testimony and
2 evidence was proper under the law for your consideration. You
3 are to consider these instructions to go as a whole. In other
4 words, you are not to isolate or give undue weight to any
5 particular instruction.

6 It is a tradition and right of your legal system that
7 parties involved in legal disputes have a jury chosen from the
8 members of the community to render a verdict. Your role as
9 jury is to decide the factual issues in the case. I, as the
10 judge will instruct you on the law and you must accept the law
11 as I state it to you. Then you will apply the law to the facts
12 as you find them and the result of your work will be the
13 verdict that you return.

14 You as jurors are the sole arbiters of the facts. You
15 determine the weight of the evidence. You apprise the
16 credibility of witnesses. You draw the reasonable inferences
17 from the evidence or lack of evidence and you resolve such
18 conflicts as there may be in the testimony.

19 In determining these issues no one may invade your
20 province or functions as jurors. In order for you to determine
21 the facts, you must rely upon your own recollection of the
22 evidence. And I'll instruct you in a minute about what is and
23 is not evidence.

24 Because you are the sole and exclusive arbiters of the
25 facts I do not mean to indicate any opinion as to the facts or

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1 what your verdict should be. The rulings I've made during the
2 trial are not any indication of my views of what your decision
3 should be. You are expressly to understand that the Court,
4 that I have no opinion as to the verdict you should render in
5 this case.

6 My role as the judge is to instruct you on the law
7 that you are to apply to the facts as you find them. You as
8 jurors are bound to accept my instructions even if you feel
9 that the law should be different than what I say it is. Also,
10 if anyone states a legal principle different from any that I
11 state to you in my instructions, it's my instructions you must
12 follow. You should not single out any single instruction or
13 any one word or phrase in instructions as alone stating the law
14 but you should consider the instructions as a whole.

15 All parties to a civil law suit are entitled to a fair
16 trial. Therefore, you must make fair and impartial decisions
17 in order to arrive at a just verdict. Under your oath as
18 jurors you are to be guided solely by the evidence presented
19 during the trial or the lack of evidence, as well as the
20 applicable law without regard to your feelings, positive or
21 negative, for any party or attorney. All parties are entitled
22 to the same fair and conscientious consideration. If you let
23 sympathy or bias interfere with your clear thinking, then there
24 is a risk that you will not arrive at a just verdict.

25 As I have said, in determining the facts, you must

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1 rely upon your own recollection of the evidence. What is
2 evidence? Evidence consists of the testimony of the witnesses,
3 the exhibits that have been received into evidence and any
4 stipulations. By contrast, what counsel have said in their
5 opening statements, questions and objections, as well as what
6 they may say in their closing arguments, is not evidence.
7 Also, anything that I have said or may say about the facts, as
8 well as anything you have heard outside the courtroom is not
9 evidence.

10 I should just mention that it's not included here but
11 to the extent that either lawyer read from a deposition
12 transcript into the record and I permitted that reading, that
13 is also evidence.

14 You should bear in mind that a question put to a
15 witness is never evidence. It is only the answer that's
16 evidence. So at times a question may have incorporated into a
17 question a statement that assumes certain facts to be true and
18 asked the witness if the statement was true. If the witness
19 denied the truth of the statement and if there's no direct
20 evidence in the record proving the assumed fact to be true,
21 then you may not consider it simply because it was contained in
22 a question. You also may not consider any answer that I
23 directed you to disregard or that I directed be stricken from
24 the record.

25 Arguments made by attorneys are not evidence. And if

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1 your recollection of the facts differs from the statements the
2 attorneys may make in their closing arguments, then it is your
3 recollection of the facts that controls.

4 During the trial I have been called on to make various
5 rulings. There have been objections, motions may have been
6 made to strike answers or conferences may have been held. You
7 should disregard these procedural matters. They are matters of
8 law and although, you may have been curious about them you
9 should not consider them. Objections are not evidence.
10 Objections are a proper part of the trial process and you
11 should make no inference or be influenced in any way by an
12 objection or by the Court's ruling on it. Likewise, it is my
13 function to cut off questioning, to strike remarks and to
14 reprimand any person when I think it is necessary but you
15 should draw no inference from that.

16 Also, the fact that I may have commented during the
17 course of the trial or asked questions of witnesses, does not
18 indicate any feeling of mine about the facts or credibility of
19 the witness. I have no such feelings, and my comments were
20 intended only to clarify the issue at hand. You should draw no
21 inference or conclusion of any kind, favorable or unfavorable,
22 with respect to any witness or party because of any comment,
23 question or instruction of mine. It is for you alone to decide
24 the credibility of witnesses and the weight, if any, to be
25 given to the testimony you've heard and exhibits you've seen.

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1 Lastly, anything you may have seen or heard when the
2 Court is not a session is not evidence. You are to decide the
3 case solely on the evidence presented to you in this courtroom.

4 There are two types of evidence that you may use in
5 reaching your verdict, direct and circumstantial evidence.
6 Direct evidence is when a witness testifies about something the
7 witness knows by virtue of his or her own senses, something the
8 witness as seen, felt, touched or heard. Direct evidence may
9 also be in the form of an exhibit admitted in evidence.

10 Circumstance evidence is evidence that tends to prove
11 a disputed fact by proof of other facts. Circumstantial
12 evidence is of no less value than direct evidence. It is a
13 general rule that the law makes no distinction between direct
14 evidence and circumstantial evidence.

15 There's a simple example of circumstantial evidence
16 that we often use in this court House. Assume that when you
17 came in this morning the sun as shining and it was a nice day.
18 Assume that the courtroom windows were covered completely so
19 that you couldn't see outside. And then as you were sitting
20 here someone walked in with an umbrella that was dripping wet
21 and then a view few minutes later another person also came into
22 the courtroom with a wet with umbrella also dripping wet. Now,
23 you can't look outside the courtroom. You can't see whether or
24 not it's raining so you don't have any direct evidence of that
25 fact. But on the combination of facts I've asked you to assume

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1 that it would be reasonable and logical for you to conclude
2 that it was raining outside.

3 That's all there is to circumstantial evidence. You
4 infer from one or more established facts like the wet umbrella
5 on the basis of reason, experience and common sense, the
6 existence or nonexistence of some or fact like it's raining
7 outside. An inference is not a speculation, suspicion or
8 guess. An inference is a reasoned, logical deduction for
9 conclusion that you, the jury, are permitted but not required
10 to draw from the facts that have been established by either
11 direct or circumstantial evidence.

12 There are times when different inferences may be drawn
13 from the same proof of facts. Here, the plaintiffs ask you to
14 draw one set of inferences, while the defendants ask you to
15 draw another. It is for you alone to decide what inferences
16 you'll draw.

17 You've now had the opportunity to listen and observe
18 all of the witnesses. It is now your job to decide how
19 believable you find each witness's testimony. How do you
20 determine where the truth is? You should use all the tests for
21 truthfulness that you would use in determining matters of
22 importance to you in your everyday life.

23 One thing you should consider is any bias hostility or
24 affection that witness may I have shown for or against a party.
25 It is your duty to consider whether a witness has permitted any

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1 such bias to color his or her testimony. If you find a witness
2 is biased, then you should view the witness's testimony with
3 caution, weigh it with care and subject it to close and
4 searching scrutiny.

5 You should also consider any interest or motive that
6 the witness may have in cooperating with a particular party, as
7 well as any interest the witness may have in the outcome of the
8 case.

9 Let me just point out that all of the witnesses here
10 were parties. So all of the witnesses have an interest in the
11 outcome of the case.

12 Interest in the outcome of a case creates a motive to
13 testify falsely and may sway a witness to testify in a way that
14 advances his or her interests. Therefore, you should accept
15 the testimony of the interested witness with great care. Keep
16 in mind though that it does not automatically follow that
17 testimony given by a interested witness is to be disbelieved.
18 There are many people who no matter how strong their interest
19 in the outcome of the case would not testify falsely. It is
20 for you to decide based on your own perceptions and common
21 sense to what extent, if at all, the witness's interest has
22 affected his or her testimony.

23 Additional factors you should consider are the
24 opportunity the witness had to see, hear and know the things
25 about which he or she testified, the accuracy of the witness's

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1 memory, the witness's candor or lack of candor. The witness's
2 intelligence, the reasonableness of the testimony, the
3 testimony's consistency or lack of consistency with other
4 credible testimony. In other words, what you must try to do in
5 deciding credibility is size up the witness in light of the
6 witness's demeanor, the explanations given in all of the
7 evidence in the case. Always remember you should use your
8 common sense, your good judgment and your own life experience.

9 If you find that any witness has willfully testified
10 falsely to any material fact, that is to any important matter,
11 then the law permits you to disregard the entire testimony of
12 that witness based on the principle that one who testifies
13 falsely about one material fact is likely to testify falsely
14 about everything. You are not required however to consider
15 such a witness as totally unworthy of belief. You may accept
16 so much of a witness's testimony as you deem true and disregard
17 what you feel is false.

18 While it's quite legitimate for an attorney to try to
19 attack the credibility of a witness, as the sole arbiters of
20 the facts you must decide for yourselves which witnesses you
21 will believe, what portion of their testimony you will accept
22 and what weight you will give to the testimony.

23 I am now going to explain the concept of "burden of
24 proof". This is a civil case. So burden of proof is by a
25 "preponderance of the evidence".

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1 The party with the burden of proof on any given issue
2 has the burden of proving to you every disputed element of that
3 party's claim by a preponderance of the evidence.

4 As I told you before, there's really only one issue
5 left in the case which is whether the defendants are the
6 employers of the plaintiffs. And I will instruct you in more
7 detail but basically, the plaintiff has the burden of proving
8 that by a preponderance of the evidence.

9 What does that mean "preponderance of the evidence"?
10 To establish a fact by a preponderance of the evidence means to
11 prove that the fact is more likely true than not true. A
12 preponderance of the evidence means the greater weight of the
13 evidence which refers to the quality and persuasiveness of the,
14 not to number of witnesses or documents. In determining
15 whether a claim has been proved by a preponderance of the
16 evidence, you should consider all the relevant testimony
17 regardless of who may have called the witness and all of the
18 relevant exhibits received into evidence, regardless of who may
19 have produced them.

20 If you find that the credible evidence on a given
21 issue is evenly divided between the parties, meaning it is
22 equally probable that one side is right as it is that the other
23 side is right, then you must decide that issue against the
24 party having the burden of proof. That is because the party
25 with the burden of proof must prove more than the simple

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1 equality of evidence. On the other hand, the party with the
2 burden of proof does not need to prove any more than a
3 preponderance of the evidence.

4 So I'd like to think of it as being on a set of
5 scales. As long as you find that on a given issue if the
6 scales tip however slightly in favor of the party with the
7 burden of proof, then you must find for that party on the issue
8 as that issue will have been proved by a preponderance of
9 evidence. But if the scales balance and they don't tip or they
10 tip away from the party with the burden of proof, then you have
11 to find it against that party.

12 So once more I remind you as I did at the beginning of
13 the trial that proof beyond a reasonable doubt is the standard
14 of a criminal case. It doesn't apply here. You should put it
15 out of your mind.

16 So let's get to the issue that you are going to have a
17 decide. I am now going to tell you about the law that you'll
18 have to apply to the facts as you find them.

19 As I instructed you, the only remaining dispute or
20 issue in this case for you to decide is whether the individual
21 defendants were plaintiffs' employers within the meaning of
22 federal and state labor laws. As I said before you'll have to
23 decide that question as to each defendant and each plaintiff.

24 So in order for an individual defendant to be liable
25 under both the FLSA, that is the Federal Labor Law and New York

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1 Labor Law, a plaintiff must show by a preponderance of the
2 evidence that the individual defendant was his or her employer.

3 An individual, not just a company, can be an employer
4 under the law. The liability of an individual defendant
5 depends on whether that individual possessed the power to
6 control the plaintiff's work. The focus is on the economic
7 realities in the situation rather than technical concepts or
8 job titles.

9 Several facts may be relevant to determining whether
10 an individual defendant is an employer. No single fact is
11 controlling and you must make your decision based on the
12 totality of the circumstances.

13 You may consider whether the defendant in question had
14 the power to hire and fire the plaintiff, had the power to
15 supervise and control the plaintiff's work schedules or the
16 power to supervisor control the plaintiff's conditions of
17 employment, had the power to determine the plaintiff's rate of
18 pay and method of payment and had the power to maintain
19 employment records.

20 The factors I've just listed are not exhaustive. You
21 may consider any other factors that you think are relevant to
22 determining whether an individual defendant had the power to
23 control the means and the manner of each plaintiff's
24 employment. You may also consider whether the individual
25 defendant had operational control of the company that employed

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1 the plaintiff, possessed an ownership interest in the company
2 or controlled significant functions of the business. However,
3 being an owner or officer of the company is not enough standing
4 alone to make the individual defendant an employer.

5 He must also have some involvement in the way the
6 company interacts with employees such as workplace conditions
7 and operations, personnel or compensation.

8 A defendant can be an employer under the law even if
9 his or her control over the employer is restricted, indirect or
10 exercised only occasionally. The law does not require an
11 individual to have been personally complicit in wage violations
12 in order to be an employer.

13 Plaintiffs have the burden to prove by a preponderance
14 of the evidence that each defendant was his or her employer and
15 you must make a separate decision for each defendant.

16 You're not responsible for determining the amount of
17 damages if there are any or any other issues in the case. So
18 with these instructions in mind you'll now hear from the
19 lawyers who will give their closing arguments. I remind you
20 that arguments by lawyers are not evidence because the lawyers
21 are not witnesses. However, what they say to you in their
22 closing arguments are intended to help you understand the
23 evidence and reach your verdict. So please pay careful
24 attention to their arguments.

25 I'll also mention that since as I said the plaintiff

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Closing Statement - Mulholland

1 has the burden of proving the employer issue the plaintiff gets
2 the last word. So, the plaintiff will begin. Then the
3 defendant will have his closing argument and then the plaintiff
4 will have brief rebuttal.

5 All right. Mr. Mulholland.

6 MR. MULHOLLAND: Like, said in my opening, there are
7 three issues, wages, hours and who is responsible. At this
8 point we've resolved the first two, so we get to focus on this
9 last one, who is responsible. There is some language to the
10 charge that the judge gave you that I want you to focus on and
11 that's economic reality.

12 This is very much a case where the owner and the
13 employer is trying to hide behind the screen middle managers to
14 escape his responsibility to make sure his employees got paid
15 properly. You heard testimony from both sides that there were
16 all sorts of managers but none of them seemed to quite be the
17 employer. We also this guy, had this person and three guys we
18 never heard of before. That is the smokescreen.

19 The economic reality is that Satinder Sharma most of
20 all was the employer for the entire operation, not just for
21 both plaintiffs here but I would contend for anyone who worked
22 at Pasta & Risotto. How do we know that? Well, checks,
23 signing checks. I don't know what stronger evidence could be
24 provided that someone, an employer is intervening in someone's
25 pay, intervening in the conditions of someone's employ than

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Closing Statement - Mulholland

1 person who signs the check.

2 He is also a 50 percent owner. Of course as the Court
3 told you, 50 percent ownership alone isn't enough but it's a
4 great start. And this is not a case where there's a minority
5 owner. This is a 50 percent owner. We heard from the
6 plaintiffs that the other owner was completely absent from the
7 business. Who does that leave? Satinder Sharma.

8 We heard that Satinder Sharma himself -- well -- some
9 other language in the charge that's very important, had the
10 power. Had the power doesn't necessarily mean used most of the
11 time. Who had the power? Where does the buck stop? I would
12 submit that Satinder Sharma is where the buck stops. We know
13 that because he became the contact person for late payments.
14 We learned that from Ms. Mukhina herself. And we also after a
15 little bit of work we learned that from Mr. Sharma himself.

16 Power to hire and fire, I think the first question I
17 asked Mr. Sharma was, do you have the power to hire and fire?
18 He said "no". Yet when confronted with deposition testimony it
19 became clear that he did indeed, at least in the past, confess
20 that he had the power to hire and fire. How a 50 percent owner
21 wouldn't have the power to hire and fire is beyond -- I'm not
22 sure what limits could possibly stop him from hiring and
23 firing. Even in the deposition testimony I was able read, he
24 admitted to hiring managers. I am hiring people cause you are
25 the boss.

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Closing Statement - Mulholland

1 Another piece of evidence I thought was very
2 significant was the fact that Ms. Mukhina was issued checks
3 from Brick Lane Curry House which is not a restaurant where she
4 worked. Why would a woman who doesn't work at a restaurant get
5 checks from that restaurant for her pay? The only thing
6 connecting the two of those with Brick Lane Curry House is
7 Satinder Sharma. What does that mean? That means she's
8 working for Satinder Sharma.

9 Who can forget the daily income reports? Well, it was
10 sent in a group text. All sorts of people got the dailies.
11 Fifty percent owner, you sign peoples' checks. You are hiring
12 managers. You admitted you to the power to hire and fire. You
13 are also getting daily income reports. The idea that this
14 person wouldn't be responsible or wouldn't be aware of the
15 labor violations in his own restaurant is absurd. Oh, wait. I
16 have too many restaurants. These people worked for between
17 four to three years and should know how your people are being
18 paid, make sure your people are being paid properly.

19 We did hear from Ms. Mukhina that Satinder Sharma
20 visited Pasta & Risotto & between two and three times a week.
21 Mr. Sharma himself and Mr. Montoya stated that maybe it was one
22 a week, twice a week, OK. He's there. He's talking to people.
23 He's aware of the operations. He knows what's going on. This
24 is someone who I would contend without a doubt in the economic
25 reality, the boss. The employer. It's not the W2 managers who

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Closing Statement - Mulholland

1 come and change every six months. It's him. He is the guy
2 that was the common denominator throughout the entire period
3 including after.

4 Mr. Montoya.

5 We heard from Mr. Carrasco how Mr. Montoya intervened
6 and determined Mr. Carrasco's schedule. We heard from Mr. --
7 go back. We heard from Mr. Montoya himself that he was
8 underneath an executive chef but he was the head chef within
9 Pasta & Risotto itself, that he had no one else. And we heard
10 from Mr. Montoya himself that he disciplined many of the
11 kitchen workers ostensibly, I suppose to make sure the health
12 department was happy and to make sure things were clean.

13 Whatever the purpose, he took it upon himself and
14 became the person to assign work tasks, to discipline, to make
15 sure that the back of the house was working properly. You
16 heard from Mr. Carrasco that it was Mr. Montoya who set his
17 schedule. You heard from Mr. Carrasco that it was Mr. Montoya
18 who -- discipline.

19 You also heard from Mr. Carrasco that it was
20 Mr. Montoya who gave him a sizable majority of his work tasks,
21 brought him from deliveries into the kitchen to do cleaning
22 tasks, to prepare food. Mr. Carrasco testified it was upwards
23 of four hours a day that he was brought into the kitchen to
24 help Mr. Montoya. It's plaintiff's contention that that
25 behavior, that seniority and that level of involvement with the

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Closing Statement - Lehman

1 conditions of Mr. Carrasco's employ made him an employer.

2 As the judge charged you, the factors there are
3 something you may consider. These are just some of the main
4 principle factors. There's another question I'd like you to
5 ask yourself, sort of -- who profited from the wage violations.
6 Who gained? Who gained from payments? Mr. Carrasco, a fixed
7 weekly salary, \$350 a week, when he was working upwards of 75
8 hours a week. Who profited, if not Satinder Sharma? Who
9 profited from paying Ms. Mukhina? \$25 straight for whatever
10 shift she worked. Who proffered from not paying Ms. Mukhina
11 for weeks at a time? Young woman, working student, working
12 four to five days a week, counting on those checks to come in.
13 Who profited from that? Thank you very much for your time and
14 I note on behalf of myself and my clients and defendants, as
15 well. Thank you.

16 THE COURT: Thank you.

17 Mr. Lehman.

18 MR. LEHMAN: My first thought right now when I look at
19 the jury is my walk home because I go to the subway and I go
20 down Duane Street and there is not a person that I know in New
21 York who doesn't think about Duane Reade when they go by Duane
22 Reade. But what I also think about is who the street is named
23 after, James Duane. He was the first mayor of New York once we
24 were the United States of America. In 1789 he was the first
25 federal judge. This is not a convenience store and none of

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Closing Statement - Lehman

1 what has happened in this dispute ahs been convenient, having
2 eight people here is not convenient, having a judge here is not
3 convenient. All of this is not convenient. But the law is the
4 law, is the law. And that's the agreement that we all made in
5 1789 and that's the agreement today.

6 Now this is not by any stretch of the imagination the
7 biggest case in the world and now it's only over one issue.
8 The jury's job is not to decide who should be responsible or
9 what we would like. It's not to say where you would like the
10 buck to stop or who could have fixed this. The company
11 admitted responsibility. Just as I told you in the beginning,
12 the company would admit responsibility but that doesn't mean
13 that these two individuals here are responsible under the law.

14 What I would like you to focus on is what the judge
15 read in your instruction. Being an owner or officer of the
16 company is not enough standing alone to make the individual
17 defendant an employer. He must also have some involvement in
18 the way the company interacts with employees such as workplace
19 conditions and operations, personnel or compensation.

20 Now I heard Mr. Mulholland call this a smokescreen but
21 I have a narrative that fits all the evidence. Mr. Sharma used
22 to be in the restaurant industry. He then began to purchase
23 with another partner or several various restaurants. Because
24 it went up to six, according to his testimony, they hired a
25 team. They had a general manager that oversaw all the

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Closing Statement - Lehman

1 restaurants and they had an executive chef who oversaw all the
2 chefs. They had an executive chef who oversaw all the chefs.
3 Each restaurant was its own LLC and each restaurant had a
4 manager, the last of whom was according to the evidence, and we
5 would contend one, of the plaintiff's friends.

6 The restaurant hit hard times. The restaurant closed
7 its door on August 15, 2015. It is not shocking that a
8 restaurant that is going under would owe one person money but
9 that does not translate this into a violation of FLSA in the
10 sense that it doesn't make these guys the employer. Now
11 whatever principle is going to be applied for who the employer
12 is has to apply to both of them equally. The owner and the
13 cook whatever principle that these two plaintiffs want to apply
14 to suit both of them at the same time should apply equally.
15 Because this plaintiff is contending that both of them are her
16 employer. And this plaintiff is contending that both of them
17 are her employer. So what principle by which would they have
18 the chef which could be a term of respect for an older man who
19 is a cook in a restaurant and a 50 percent owner, not both
20 owners, just one owner.

21 Mr. Mulholland asked you a question at the end of his
22 closing argument, Who profited? Well, the answer is, the
23 company profited. And then that if there was a profit it went
24 to the owners but we know it wasn't that profitable. The
25 evidence is the restaurant closed. What I believe was trying

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Closing Statement - Lehman

1 to happen there is because someone profited therefore, they're
2 responsible. But we know that's not true. The instructions
3 are just because someone's an owner doesn't mean they are
4 responsible any more than a shareholder in a large corporation
5 would be responsible as an employer or an owner for everything
6 that happens in that company.

7 Now this is a different situation. It is not
8 McDonald's but it is still a company. It is still a
9 restaurant. Again, he must also have some involvement in the
10 way the company interacts with the employee such as workplace
11 conditions, operations, personnel or compensation.

12 There is from what I can tell little dispute over how
13 much Mr. Sharma was there, three times a week, two times a
14 week, one time a week. What did he do when he was there? Was
15 there any testimony that he talked to the plaintiff or the
16 other plaintiff? He doesn't speak Spanish. How is he
17 determining their workplace condition? He didn't hire either
18 of these people. He didn't fire them. The store shut down.
19 He didn't control their schedule or have the power to supervise
20 them.

21 Now let's focus on that for a second. The power to
22 supervise. He set up these investments so that that they would
23 purchase the restaurant, have an LLC and then there was someone
24 else who it took care of it which is imminently sensible when
25 you have six restaurants that you are trying to make money off

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Closing Statement - Lehman

1 of. That's what owners would do but that doesn't mean that
2 he's determining the paycheck.

3 You'll also heard where that power was delegated to,
4 the manager. If you want to know where the buck stopped, it
5 should have stopped with the manager. That's what they get
6 compensated for. And you saw just like you saw Mr. Sharma's
7 signature on the check. And by the way, you never saw a check
8 that he filled out completely but you did see other managers.
9 And someone filled out those checks completely because the
10 plaintiff testified that they weren't hers.

11 In fact, here is how little one of the plaintiff's
12 interactions was with Mr. Sharma. It was asked and you may
13 recall:

14 Did you hear Mr. Sharma's discussions with the
15 manager? And she said, No. I tried not to listen.

16 So she can't even testify that he knew what was going
17 on in terms of the day-to-day business.

18 And you can also judge their credibility. There was a
19 moment in the trial you may remember when I asked about this
20 common word, a little bit stilted. The reason why that was
21 important was because I wanted to see if they would be
22 consistent. Remember at the beginning I said there will be
23 inconsistencies here? They allege after having met with lawyer
24 as she testified, have you met with a lawyer, that they
25 understood the complaint when they filed and that everyone was

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Closing Statement - Lehman

1 paid the same way. She was paid by checks. He was paid by
2 checks, pointing to the chef. You know who didn't say he was
3 paid by checks? The delivery person. But he signed a
4 complaint after having met with lawyers and said we were all
5 paid the same way.

6 Mr. Sharma's interactions with Ms. Mukhina increased
7 dramatically after the restaurant closed. But isn't that what
8 we want people to do? The restaurant owes you money. Do the
9 right thing. But that doesn't transform you for all those
10 years that you were there to the employer. He said I wanted to
11 do the right thing. The person's owed money.

12 You may also recall that when asked, Did you ever see
13 Mr. Sharma give directions to managers about how to run the
14 business? I did not see him personally. And you may also
15 remember on Exhibit Number Three that had the hours recorded,
16 was that Mr. Sharma's handwriting? No. Was that the cook's
17 handwriting? No. Whose handwriting was it? The manager's
18 handwriting who was keeping track of hours.

19 And at any point the plaintiffs could have gone to the
20 manager and said, this is how much I'm owed. In fact that's
21 what happened. That's why all the checks had different
22 amounts. Because they would go to the manager and say this is
23 what I'm owed. And they would sign it. Now if the manager
24 wasn't there and they would use a blank check. But that
25 doesn't mean that Mr. Sharma is engaged in day-to-day payroll

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Closing Statement - Lehman

1 or knowing how they're getting paid in a situation where the
2 restaurant admits that it is liable and takes responsibility
3 for it.

4 You may also remember in terms of her time that when
5 she testified she said, I kept records at home. And this goes
6 to her credibility. Wouldn't the best times to bring those
7 records here be here in federal court before a jury that's
8 impaneled so that we could be accurate. You can use that to
9 evaluate whether or not she is telling the truth about whether
10 or not these two people had daily interactions with her and
11 were controlling her workplace environment.

12 And you know there's a lot of focus on the 50 percent
13 owner here, right? But they also sued the chef and the cook
14 who said he gave the schedule to them because he spoke Spanish.
15 And I'm really at a loss to think of what we would want from a
16 restaurant if someone is not their your job and you're part of
17 a team and everyone could get in trouble with a health
18 inspection and it gets closed, then everyone loses their job,
19 not to say to someone, pick up your mess. If that interaction
20 leads to him becoming an employer it is certainly something I
21 want to know because I have a lot of clients who I want to
22 inform, don't tell other people to clean-up your mess.

23 In fact, Ms. Mukhina said this. Who gave you your
24 schedule? The managers at the time. That wasn't my question.
25 That was from her own counsel. Who trained you? The two

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Closing Statement - Lehman

1 waitresses that worked there at the time. Not either of these
2 defendants. And then there was a lot of hubbub about whether
3 or not there was a punch card. They are not legally required
4 to have a punch card. You are legally required to record the
5 time, the manager, the last one who was Vanja.

6 And as far as this underpayment goes, we're New
7 Yorkers. On that we can take two issues using our common sense
8 and credibility. Do restaurants in New York dramatically
9 increase in business around Christmas on 52nd between Second
10 and Third? Or is your experience that the place becomes kind
11 of dead? And if she's keeping records, why couldn't we
12 determine when the overtime was? Again, the company accepts
13 responsibility but what that question goes toward is her
14 credibility on her interactions with both of these gentlemen.

15 And let's remember, this as far as her credibility.
16 Remember when I started asking about Vanja.

17 "Q. Who was your last manager?

18 "A. Last manager, Vanja Bojic.

19 "Q. Are you friends with Vanja?

20 "A. We don't speak that much. Occasionally, she can text me
21 something but we're not close friends.

22 Then I asked her about a text message.

23 "Q. Did you ever text Satinder? Please don't ask Vanja to
24 talk to me. She is my friend.

25 A. yes. It was after we started preparation for trial

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Closing Statement - Lehman

1 because he tried to text me. He started to text me and to tell
2 me why do you want to go to trial if you are going to involve
3 Vanja, it's going to hurt her.

4 So they're not close friends but who is the only
5 person who she is concerned about in this situation? Vanja. I
6 can only think of two reasons. One, she doesn't want Vanja to
7 come here and testify that it was Vanja's responsibility for
8 all of this because she was the manager.

9 I said two reasons but I am at a great loss to see why
10 someone who wasn't close friends would text someone after a
11 lawsuit started or ask the 50 percent owner not to contact that
12 person about what happened. It is undisputed she was the
13 manager and she was the one who would know what happened.

14 And we could remember in the beginning I said, I think
15 they would be inconsistent and I think there would be times
16 when you said "I don't remember". So I would ask, whose
17 handwriting is this on the check? I don't know. Do you know
18 who gave this check? I don't recall. Everyone else testified,
19 well, I believe the managers gave the checks to him. But how
20 could you be working somewhere with only one manager at a time
21 and not know who filled out that check and not recognize the
22 handwriting?

23 Look, we can also consider this. She's owed money by
24 the restaurant. It angers you. I would get angry. You owe my
25 money. I want my money I worked for this and you have a

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Closing Statement - Lehman

1 motivation to therefore use whatever law you think you can find
2 to come in this court to get money but that doesn't mean that
3 this law was violated by these two individuals. It doesn't
4 mean that they're employers. And that is not what juries do.

5 THE COURT: Three minutes.

6 MR. LEHMAN: This is what I'll say. Every plaintiff
7 who has been wronged wants a jury to follow the law. Every
8 defendant who has been wrongly accused of something wants the
9 jury to follow the law. The only people who don't want you to
10 follow the law are people who want to abuse the system.

11 The good news is I've never known a jury not to do
12 this in all my years. I know that people go into that room and
13 whatever prejudices they have against an owner or whatever they
14 think the law should be every jury I've ever known has done
15 their best and I believe that you will too. I believe that you
16 will say it doesn't matter what I think, the law should be, who
17 could fix that problem. It matters what the situation is and
18 it matters how to apply it, knowing that both of those
19 plaintiffs contend that both of these guys are their employers.
20 And now you may ask under this legal definition who was that
21 person? And is that person here? And is that person friends
22 with one of the plaintiffs?

23 Thank you very much.

24 THE COURT: All right. You have five minutes.

25 MR. MULHOLLAND: Very briefly.

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Closing Statement - Lehman

1 First, I I'd like to point out that Exhibit Three is
2 not recording hours. It's a recording of pay during a shift,
3 both the shift pay, the \$25 and whatever tips were earned that
4 particular day. We're not deciding wages an hour today.

5 The other thing I wanted to bring up with you is
6 witness credibility. One of the powers that you have as jurors
7 is to evaluate one's credibility. I hope that you'll ask
8 yourselves when you start deliberating which of the witnesses
9 were being completely candid with you. I would submit that
10 Mr. Sharma in particular did not come here to be candid. He
11 came here to muddy the waters. And I think if you ask yourself
12 that question you might come to the same conclusion.

13 Thank you again.

14 THE COURT: All right. Thank you.

15 That concludes the closing arguments you are going to
16 go into the jury room to begin your deliberations. When you go
17 into the jury room the very first thing you should do is elect
18 one of your jurors to be the foreperson. That person will
19 preside over the deliberations and people speak for you here in
20 open court. That person has no greater voice or authority than
21 any other juror but that person is like the liaison between you
22 all and the Court. So that person will send out notes. And
23 when you have reached a verdict, he or she will notify the
24 marshal that the jury has reached a verdict.

25 We'll provide for you a copy of the three exhibits

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Closing Statement - Lehman

1 that have been admitted into evidence and send them into the
2 jury room with you and you should feel free to refer to those
3 during your deliberations. If you want any of the testimony
4 read back you can request that but please remember that when
5 you request testimony, if you do, the lawyers first have to
6 agree on what portions of testimony might be called for then we
7 will have to find it and then if they disagree I will have to
8 resolve their disagreements and that can be a time consuming
9 process. So please try to be as specific as possible if you
10 request testimony.

11 Your request for testimony or any other communications
12 you have with the Court should be made to me in writing, signed
13 by foreperson with the time indicated on it and given to the
14 marshal in an envelope. But the one thing, do not put in a
15 note that you send out is where you stand at any point. Don't
16 ever say oh, our vote is a four to two or whatever it is.
17 Don't say that. You should only tell me what your result is
18 once you have reached a verdict and as I mentioned your verdict
19 as to be unanimous. So let me explain that.

20 The most important part of case is the part now that
21 you an jurors are about to ply and it is for you and you alone
22 to decide whether the plaintiffs have sustained their burden of
23 proof as I've explain to you with respect to their claim. If
24 you find that the plaintiffs have succeeded you should return a
25 verdict for the plaintiff. But if you find that the plaintiffs

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Closing Statement - Lehman

1 is have failed to sustain their burden on any of the questions
2 that I ask, you should return a verdict in favor of the
3 defendant.

4 I know you'll try the issues you've been presented
5 according to the oath that you took at the very beginning of
6 the trial. You promised you would well and truly try the
7 issues joined in this case and a true verdict render. It is
8 your duty jurors to consult with one another and deliberate
9 with a view to reaching an agreement. Each of you must decide
10 the case for yourself but you should only do that after you
11 have had a chance to consult with an discuss with your fellow
12 jurors.

13 You should also not hesitate to change your opinion
14 when or if you become convinced that you are incorrect. Every
15 juror should be heard. No one juror should hold center stage
16 or monopolize or control the deliberations. As I said, your
17 verdict must be unanimous. But you are not bound to surrender
18 honest convictions concerning the effect or weight of the
19 evidence for the mere purpose of returning a verdict or solely
20 because of the opinion of other jurors. Discuss it and weigh
21 your respective opinions dispassionately without regard to
22 sympathy, prejudice or favor for either party and adopt the
23 conclusion that your good conscience appears to be in
24 accordance with the truth.

25 Again, each of you must make your on conclusion about

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Closing Statement - Lehman

1 the proper outcome of the case based on your consideration of
2 the evidence and your discussions with each other. No juror
3 should surrender his or her conscientious beliefs solely for
4 the purpose of rendering a unanimous verdict.

5 In just a second I am going to give each of you a
6 verdict sheet and the purpose of the questions is to help us,
7 the Court, the attorneys, the plaintiffs, the attorneys, the
8 plaintiffs to understand what your findings are. You should
9 not draw any inference from the way the questions are worded as
10 to what the answers should be and the questions shouldn't be
11 taken as any indication of my opinion as to how they should be
12 answered. As I mentioned, I don't have any opinion about that.

13 You should answer every question and after you've
14 reached a verdict the foreperson should fill-out one copy of
15 the verdict sheet, sign it, date it and then keep it. Give a
16 note to the deputy or the marshal stating you've reached a
17 verdict. Then I'll bring you out here. Don't say what your
18 verdict is in the note.

19 Pass out the verdict form.

20 (Pause)

21 THE COURT: So this is the verdict form. It has four
22 questions on it and the first one, they all go to the issue of
23 whether the defendants will -- the first one is:

24 Has plaintiff Carrasco shown that defendant Sharma was
25 his employer?

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Closing Statement - Lehman

1 And just so you know, the burden of proof as I
2 mentioned is proof by a preponderance of the evidence. So
3 plaintiff has to show by a preponderance of the evidence that
4 defendant Sharma was his employer.

5 Second question is similar:

6 Has the plaintiff Mukhina shown that the defendant
7 Sharma was her employer?

8 And the next two questions are about Mr. Montoya.

9 Has the plaintiff Carrasco shown that defendant
10 Montoya was his employer.

11 The fourth:

12 Has the plaintiff Mukhina shown that the defendant
13 Montoya was her employer?

14 And that's all the questions. And then on the back on
15 one copy you'll all sign and then the foreperson will sign
16 again with the date and time. You'll keep the form. Despite
17 what it says at the top, don't give it to the marshal. Keep it
18 in your hand and just give the marshal a note saying you've
19 reached a verdict and then we'll come back and deal with it.

20 You have to be in agreement with the verdict as
21 announced in Court. So you all have to unanimous agree as to
22 each question. And when you come back in here and give me your
23 verdict form, I'll actually poll you and say Juror No. 1, is
24 that your verdict? Juror No. 2, and I'll ask each of you
25 whether the verdict that has been reflected in the form given

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Closing Statement - Lehman

1 to me is the verdict of each of you.

2 So I'll remind you that you took an oath to render
3 judgment impartially and fairly without prejudice, sympathy,
4 without fear solely upon the evidence in the case and the
5 applicable law and it is your duty, I know you'll do your duty
6 to reach a just and true verdict.

7 One final word and I say this not because I think it's
8 necessary. It is the custom to say it here, so I will. And
9 that is that you should treat each other with courtesy and
10 respect during your deliberations, notwithstanding, any
11 disagreements you may have. All litigants stand equal in this
12 room. All litigants stand equal before the bar of justice and
13 your duty is to decide between those parties fairly and
14 impartially to see that justice is done all in accordance with
15 your oath.

16 So thank you so much for your time and your hard work.
17 We have provided lunch and we're actually going to go to lunch
18 too. So if you have a question, we're probably not going to be
19 available. We'll be available probably for just a couple
20 minutes but after that we probably won't be available for about
21 an hour or an hour and a half. You can use that time to eat
22 and deliberate and then we'll be waiting to hear from you if
23 you have any questions or if you have your verdict, we'll be
24 available.

25 So, would you swear the marshal please.

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Verdict

1 (Marshal sworn)

2 COURTROOM DEPUTY: You are in the hands of the
3 marshal.

4 THE COURT: Have a good lunch.

5 (Luncheon Recess)

6 THE COURT: I am about to send the exhibits back to
7 the jury room. If you want to inspect them, you may.

8 MR. LEHMAN: That's fine, your Honor.

9 THE COURT: All right. OK. Thank you everyone and
10 have a good lunch.

11 We are adjourned.

12 (Luncheon Recess)

13 THE COURT: We have a note from the jury. They've
14 reached a verdict.

15 Mr. Lehman's replacement is Mr. Jones.

16 (Jury present)

17 THE COURT: You may be seated.

18 Ms. Helburn, I understand you are the foreperson and
19 that the jury has a verdict. May I have your verdict form?

20 FOREPERSON: Yes.

21 (Pause)

22 THE COURT: OK. First, I'll read the verdict form and
23 then I'll poll the jury.

24 Question One. Has Plaintiff Carrasco shown that
25 Defendant Sharma was his employer?

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Verdict

1 Answer: Yes.

2 Question Two. Has Plaintiff Mukhina shown that
3 Defendant Sharma was her employer?

4 Answer: Yes

5 Question Three. Has Plaintiff Carrasco shown that
6 Defendant Montoya was his employer?

7 Answer: No

8 Question Four. Has plaintiff Mukhina shown that
9 Defendant Montoya was her employer?

10 Answer: No.

11 And it is signed by all of the jurors except Juror No.
12 Three, who was excused.

13 So let me poll the jury. Ms. Helburn, is that your
14 verdict?

15 A JUROR: Yes.

16 THE COURT: Ms. O'Donoghue, is that your verdict?

17 A JUROR: Yes.

18 THE COURT: Mr. Linton, is that your verdict?

19 A JUROR: Yes.

20 THE COURT: Ms. Willis, is that your verdict?

21 A JUROR: Yes.

22 THE COURT: Mr. Meehan, is that your verdict?

23 A JUROR: Yes.

24 THE COURT: Mr. Nordmann, is that your verdict?

25 A JUROR: Yes.

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Verdict

1 THE COURT: And Mr. Charles, is that your verdict?

2 A JUROR: Yes.

3 OK. Thank you, ladies and gentlemen, for all of your
4 hard work.

5 What I neglected to do, Mr. Lehman had to excuse himself.
6 His colleague, Mr. Jones, is here in his place. So, Mr. Lehman
7 has not undergone a dramatic change in appearance. We have his
8 colleague here with us instead.

9 What I wanted to do was just thank you and then excuse
10 you. I know it's not easy to be a juror and to sit in judgment
11 of other people. But as I said, before I think it's a really
12 important civic duty and I've also found that people really
13 find it rewarding. So I hope you enjoy the experience and that
14 it was rewarding. We certainly appreciate it. So thank you to
15 all of you.

16 So here is what I would like to do is I'd like you to
17 go back to the jury room. Leave all of your papers there. I'd
18 like to come back and shake all of your hands and thank you and
19 then you'll be free to leave. So could you just wait for me in
20 the jury room.

21 Thank you.

22 (Jury dismissed)

23 THE COURT: I wanted to thank counsel, particularly,
24 for working together.

25 Mr. Jones, I know you'll convey this to Mr. Lehman but

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Verdict

1 I know it wasn't always easy and at times it was rancorous and
2 I really appreciate the professional way that you were able to
3 work together to make this work efficiently and well.

4 So thank you to both counsel very much.

5 MR. MULHOLLAND: Well, your Honor. Thank you.

6 MR. LEHMAN: Thank you.

7 (Adjourned)

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